



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 7 2016

REPLY TO THE ATTENTION OF

SPECIAL NOTICE LETTER
URGENT LEGAL MATTER
PROMPT REPLY NECESSARY
CERTIFIED MAIL: RETURN RECEIPT REQUESTED

SR-6J

Bill Nuti, Chief Executive Officer and Chairman
and
Bryan A. Heath, Senior EHS Consultant
NCR Corporation
3097 Satellite Boulevard
Duluth, Georgia 30096-1242

John M. Heyde
Sidley Austin, LLP
One South Dearborn
Chicago, Illinois 60603

Re: Special Notice Letter related to Area 1 of Operable Unit 5 of the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site, EPA ID# MID006007306

Dear Sirs:

This letter follows previous notifications that the United States Environmental Protection Agency (EPA) sent to NCR Corporation (NCR), in connection with the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site, EPA ID# MID006007306 (the Site). EPA notified NCR of its potential responsibility under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9607(a), for the cleanup of the Site, including all costs incurred by EPA in responding to releases of hazardous substances at the Site. Through this letter, EPA is providing NCR an opportunity to resolve a portion of its liability at the Site.

Background

Based on an extensive review of records relating to the release and/or disposal of hazardous substances at the Site, EPA has identified NCR as a potentially responsible party (PRP) that contributed hazardous substances at the Site. Under CERCLA, NCR is responsible for the costs of cleaning up the Site. EPA has selected a cleanup approach for Area 1 of Operable Unit 5 (OU5) of the Site, which is described in a Record of Decision (ROD) issued by EPA in September of 2015.

Special Notice and Negotiation Moratorium

EPA has determined that use of the special notice procedures set forth in Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), may facilitate a settlement between NCR, other PRPs, and EPA for implementation of the selected response action. Under Section 122(e), this letter triggers a 120-day moratorium on certain EPA response activities at the Site.

During this 120-day period, NCR is invited to participate in formal negotiations with EPA in an effort to reach an agreement to conduct and/or finance the selected response action at the Site. Pursuant to Section 122(e), NCR has 60 days from receipt of this notice to make a proposal to EPA to undertake or finance the action described in the ROD.

If a proposal in good faith is not received within 60 days, or EPA determines that NCR's proposal does not constitute a good faith offer, or a timely settlement cannot be reached, NCR will be notified in writing of EPA's decision to end the moratorium. EPA then may (1) fund the remedial action and pursue a cost recovery claim under Section 107 of CERCLA against NCR and/or the other PRPs; or (2) issue a Unilateral Administrative Order to NCR and/or the other PRPs under Section 106(a) of CERCLA, 42 U.S.C. § 9606, requiring NCR and/or the other PRPs to perform the work described in the ROD.

If settlement is reached between EPA and NCR within the 120-day negotiation moratorium, the settlement will be embodied in a Consent Decree (CD) for Remedial Design and Remedial Action (RD/RA). When approved by EPA and U.S. Department of Justice (DOJ), the CD will then be lodged and entered in federal court.

Good Faith Offer

A proposed CD and Statement of Work (SOW) are enclosed to assist NCR in developing a good faith offer. EPA considers a good faith offer to conduct or finance the RA to be a written proposal that demonstrates NCR's or a PRP group's qualifications and willingness to perform the work described in the ROD and includes the following elements:

- A statement of willingness and financial ability to implement the requirements of the ROD and proposed CD and that provides a sufficient basis for further negotiations;
- A response to the proposed CD (if the offer contemplates modifications to the CD, please make revisions or edits to the CD and submit a version showing NCR's modifications to it in a redline/strikeout format);
- A demonstration of NCR's technical ability to carry out the RA, including the identification of firm(s) that would actually conduct the work, or a description of the process that will be used to select the firm(s);
- A detailed SOW or workplan identifying how NCR or the PRP group intends to proceed with the RA;
- A statement of NCR's or the PRP group's willingness to reimburse EPA for costs EPA will incur, or has incurred, in overseeing implementation of the RA;
- A list identifying each party on whose behalf the offer is being made, including name, address, and telephone number of each party; and

- The name, address, and phone number of the party that will represent NCR in negotiations.

Demand for Reimbursement of Costs

With this letter EPA encourages NCR to voluntarily negotiate a CD in which NCR and other PRPs agree to perform the RD/RA and pay past and future EPA response costs. EPA has already taken certain response actions and incurred certain costs in response to conditions at the Site. At this time, under Section 107(a) of CERCLA, EPA hereby makes a demand for payment of \$37,047,563.69 from NCR plus all interest authorized to be recovered under Section 107(a).

Enclosed with this letter is an itemized cost summary associated with Site investigation, community involvement activities, the remedy selection process related to the ROD for Area 1 of OU5, unpaid oversight costs related to the 2007 time-critical removal action (TCRA) at the Plainwell Impoundment stretch of Area 1 of OU5, and response costs related to the TCRA at the Portage Creek section of Area 1 of OU5.

In addition to costs set forth in the itemized cost summary, EPA expended \$3.5 million dollars to fund, in part, the response work related to the 2007 and 2009 TCRAs at the Plainwell Impoundment and Plainwell Dam 2 sections of Area 1 of OU5. The administrative agreements related to those actions, both of which were previously provided to NCR, detail the terms of EPA's partial funding of the work.

EPA also anticipates expending additional funds for response activities, which may include a remedial action or oversight of a remedial action. Whether EPA funds the response action or simply incurs costs by overseeing the parties conducting the response activities, NCR is potentially liable for the expenditures plus interest.

Some or all of the costs associated with this notice may be covered by current or past insurance policies. Most insurance policies will require that NCR timely notify its carrier(s) of a claim against NCR. To evaluate whether NCR should notify its insurance carrier(s) of this demand, NCR may wish to review current and past policies, beginning with the date of NCR's first contact with the Site, up to the present. Coverage depends on many factors, such as the language of the particular policy and state law.

In the event that NCR files for protection in a bankruptcy court, NCR must include EPA as a creditor, because EPA has a potential claim against NCR. EPA reserves the right to file a proof of claim or application for Reimbursement of Administrative Expenses.

PRP Steering Committee

EPA recommends that all PRPs meet to select a steering committee responsible for representing the group's interests. EPA recognizes that the allocation of responsibility among PRPs may be difficult. If the PRPs are unable to reach consensus among themselves, we encourage the use of the services of a neutral third party to help allocate responsibility. Third parties are available to

facilitate negotiations. At the PRPs' request, EPA will provide a list of experienced third-party mediators, or arrange for a mediator.

Administrative Record

In accordance with Section 113 of CERCLA, 42 U.S.C. § 9613, EPA has established an Administrative Record (AR) containing the documents that serve as the basis for EPA's selection of the appropriate response action for the Site. The AR is available for inspection and comment at the Superfund Records Center, U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois. NCR may wish to review the AR to assist NCR in responding to this letter, but NCR review should not delay such response beyond the moratorium provided by CERCLA.

PRP Response and EPA Contact Person

NCR is encouraged to contact EPA within thirty days of receipt of this letter to indicate NCR's willingness to participate in future negotiations concerning this Site. NCR may choose to respond individually or through a steering committee if such a committee has been formed. If EPA does not receive a timely response, EPA will assume that NCR does not wish to negotiate a resolution of NCR's liabilities in connection with Area 1 of OU5, and that NCR has declined any involvement in performing the response activities related to Area 1 of OU5.

NCR's response to this Special Notice Letter including written proposals to perform the selected response action for Area 1 of OU5 should be sent to:

James Saric
US Environmental Protection Agency, Region 5
77 West Jackson Boulevard, SR-6J
Chicago, Illinois 60604

The factual and legal discussions in this letter are intended solely to provide notice and information, and such discussions are not to be construed as a final EPA position on any matter set forth herein. Due to the seriousness of the environmental and legal consequences posed by the conditions at the Site, EPA urges that NCR give immediate attention (and prompt response) to this letter.

In addition, EPA has notified the Federal Natural Resource Trustees¹ and the State of Michigan of its intention to enter into negotiations for the performance of response actions at Area 1 of OU5.

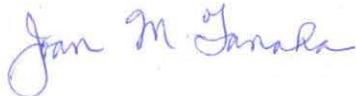
¹ Natural resource trustees are government agencies given the authority to assess the injury to natural resources caused by the release of hazardous substances and to seek the restoration, replacement, or acquisition of equivalent natural resources. The Federal Natural Resource Trustees (Trustees) for this Site are the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce and the U.S. Fish and Wildlife Service.

EPA is aware that the PRPs have had discussions with the Trustees regarding natural resources damages. Further, EPA is aware that the PRPs and the Trustees are identifying restoration activities that may be performed in coordination with remedial work in Area 1 of OU5 of the Site. Accordingly, the proposed consent decree and statement of work may be modified to include natural resources damages.

If you have any questions regarding the technical aspects of this letter, please contact James Saric, Remedial Project Manager, at 312-886-0992. Please direct legal questions to Nicole Wood-Chi, Associate Regional Counsel, at 312-886-0664. If you have any other questions regarding this letter, you may contact me at 312-353-5425.

My staff and I look forward to working with NCR during the coming months.

Sincerely,



Joan M. Tanaka, Chief
Remedial Response Branch #1

Enclosures

Itemized Cost Summary
RD/RA Consent Decree
RD/RA Statement of Work

Cc: (via email)

Kristin Furrie, DOJ Trial Attorney
Sumona Majumdar, DOJ Trial Attorney
James Saric, Region 5 Superfund Division
Lawrence Schmitt, Region 5 Superfund Division
Region 5, SFD Division, Records Center
Nicole Wood-Chi, Office of Regional Counsel, Region 5
Charles Mikalian, Office of Regional Counsel, Region 5
Paul Bucholtz, MDEQ
Judith Alfano, MDEQ
Polly Synk, Michigan Attorney General's Office
Todd Goeks, NOAA
Lisa Williams, U.S. Fish and Wildlife
Laurie Lee, NOAA
Mary Lynn Taylor, Department of the Interior

Enclosure A
(Itemized Cost Summary)

Itemized Cost Summary

ALLIED PAPER, KALAMAZOO, MI SITE ID = 05 9B

Operable Unit(s): 00, 05, 5A, 5B, Blank

CUMULATIVE THROUGH 01/31/16 FOR SPECIAL NOTICE LETTERS FOR AREA 1 OF OU 05

REGIONAL PAYROLL COSTS	\$3,315,458.18
HEADQUARTERS PAYROLL COSTS	\$87,868.89
REGIONAL TRAVEL COSTS	\$259,495.11
HEADQUARTERS TRAVEL COSTS	\$16,256.16
ALLOCATION TRANSFER IAG (ATS)	
AGENCY FOR TOXIC SUBSTANCES & DISEASE RGY (ATSDR)	\$226,707.00
AUTOMATED DATA PROCESSING	
SYSTEMS RESEARCH AND APPLICATIONS CORP. (EPW04015)	\$50,000.00
ENFORCEMENT SUPPORT SERVICES (ESS) CONTRACT	
GRB ENVIRONMENTAL SERVICES, INC. (EPW05013)	\$301,313.62
INDUSTRIAL ECONOMICS (EPW06092)	\$6,974.47
BOOZ ALLEN & HAMILTON (EPW11016)	\$12.06
ENVIRONMENTAL RAPID RESPONSE SERVICES (ERRS)	
ENVIRONMENTAL QUALITY MANAGEMENT, INC. (EPS50802)	\$11,241,127.19
ENVIRONMENTAL SERVICES ASSISTANCE TEAMS (ESAT)	
LOCKHEED ENGINEERING AND SCIENCES COMPANY (68-C0-0049)	\$21,000.00
LOCKHEED ENVIRONMENT SYS & TECHNOLOGIES (68-D1-0158)	\$20,638.11
LOCKHEED ENVIRONMENTAL SYSTEMS & TECH. CO (68-D6-0002)	\$12,812.84
ALION SCIENCE AND TECHNOLOGY CORPORATION (68-W0-1014)	\$22,272.70
TECHLAW, INC. (EPW06031)	\$28,667.94
TECHLAW, INC. (EPW13025)	\$10,683.20
FIELD INVESTIGATION TEAM (FIT) CONTRACT	
CH2M HILL (68-01-6692)	\$1,223.13
ECOLOGY AND ENVIRONMENT (68-01-7347)	\$247.88

Itemized Cost Summary

ALLIED PAPER, KALAMAZOO, MI SITE ID = 05 9B

Operable Unit(s): 00, 05, 5A, 5B, Blank

CUMULATIVE THROUGH 01/31/16 FOR SPECIAL NOTICE LETTERS FOR AREA 1 OF OU 05

INTERAGENCY AGREEMENT (IAG)

U.S. DEPARTMENT OF JUSTICE (DOJREPORT)	\$613,458.46
DEPARTMENT OF INTERIOR (DW14948147)	\$23,720.80
DEPARTMENT OF JUSTICE (DW15923439)	\$16,906.66
DEPARTMENT OF TRANSPORTATION (DW69948097)	\$6,887.00
DEPARTMENT OF ENERGY (DW89923106)	\$22,666.10

NATIONAL ENFORCEMENT INVESTIGATION CENTER (NEIC)

DUN & BRADSTREET (OU1001NBLX)	\$48.50
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RESPONSE ACTION (RAC) CONTRACT

CH2M HILL, INC. (68-W6-0025)	\$1,074,891.46
CH2M HILL, INC. (EPS50601)	\$252,767.38

SUPERFUND COOPERATIVE AGREEMENT (SCA)

MICHIGAN D.N.R. (99508801)	\$326,778.79
KALAMAZOO RIVER PROTECTION (99512201)	\$43,643.00
MICHIGAN DNR & ENVIRONMENT (V00E00776)	\$38,900.51
MICHIGAN DEQ (V00E00999)	\$293,358.97
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY (V00E18301)	\$8,867.51
MICHIGAN DEQ (V00E18302)	\$24,624.91
MATCH-E-BE-NASH-SHE-WISH (V96548701)	\$16,802.19
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY (V97586001)	\$561,000.00

SUPERFUND TECH. ASSISTANCE & RESPONSE TEAM (START)

WESTON SOLUTIONS, INC. (EPS50604)	\$1,087,581.62
TETRA TECH, INC. (EPS51301)	\$32,697.29

TECHNICAL ASSISTANCE TEAM (TAT) CONTRACT

ROY F. WESTON, INC. (68-W0-0036)	\$911.86
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TECHNICAL ENFORCEMENT SUPPORT (TES) CONTRACT

JACOBS ENGINEERING (68-01-7351)	\$11,104.68
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Itemized Cost Summary

ALLIED PAPER, KALAMAZOO, MI SITE ID = 05 9B
Operable Unit(s): 00, 05, 5A, 5B, Blank

CUMULATIVE THROUGH 01/31/16 FOR SPECIAL NOTICE LETTERS FOR AREA 1 OF OU 05

TECHNICAL SERVICE AND SUPPORT

ARCTIC SLOPE REGIONAL CORP(ASRC) (68-W0-1002)	\$36,769.48
ASRC MANAGEMENT SERVICES, INC. (EPW05052)	\$42,560.85
PRIMUS SOLUTIONS, INC. (EPW11024)	\$26,191.76

CONTRACT LAB PROGRAM (CLP) COSTS

FINANCIAL COST SUMMARY	\$1,356,001.70
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MISCELLANEOUS COSTS (MIS)	\$7,833.92
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EPA INDIRECT COSTS	\$12,664,912.06
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TOTAL SITE COSTS BEFORE COST RECOVERY COLLECTIONS	\$34,214,645.94
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COLLECTIONS/ADJUSTMENTS	(\$667,082.25)
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INTEREST-PORTAGE CREEK RMVL	\$167,735.39
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Total Site Costs:	<u>\$33,715,299.08</u>
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Enclosure B
(RD/RA CD and SOW)

REMEDIAL DESIGN/REMEDIAL ACTION

STATEMENT OF WORK

OPERABLE UNIT 5 AREA 1

ALLIED PAPER INC./PORTAGE CREEK/KALAMAZOO RIVER SUPERFUND SITE

Kalamazoo and Allegan Counties, State of Michigan

EPA Region 5

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1. INTRODUCTION

1.1 Purpose of the SOW. This Statement of Work (SOW) sets forth the procedures and requirements for implementing the Work.

1.2 Structure of the SOW.

- Section 2 (Community Involvement) sets forth EPA's and Settling Defendants' (SDs') responsibilities for community involvement.
- Section 3 (Remedial Design) sets forth the process for developing the RD, which includes the submission of specified primary deliverables.
- Section 4 (Remedial Action) sets forth requirements regarding the completion of the RA, including primary deliverables related to completion of the RA.
- Section 5 (Reporting) sets forth SDs' reporting obligations.
- Section 6 (Deliverables) describes the content of the supporting deliverables and the general requirements regarding SDs' submission of, and EPA's review of, approval of, comment on, and/or modification of, the deliverables.
- Section 7 (Schedules) sets forth the schedule for submitting the primary deliverables, specifies the supporting deliverables that must accompany each primary deliverable, and sets forth the schedule of milestones regarding the completion of the RA.
- Section 8 (State Participation) addresses State participation.
- Section 9 (References) provides a list of references, including URLs.

1.3 The Scope of the Remedy includes the actions described in Section 2.12 of the ROD, including the selected sediment and floodplain soil remedy for Area 1 of OU5 as described below.

(a) The Area 1 of OU5 sediment Remedy consists of the following main components:

- (1) Removal of impacted sediment in at least five hot spot areas and the Crown Vantage side channel, with monitored natural recovery (MNR), institutional controls (ICs), and engineering controls (ECs) throughout Area 1. The five identified hot spots (KPT-19, KPT-20, KRT-4, KRT-5/FF-19, and S-IM1) are located within the stretch of Area 1 known as the remedial reach (spanning from RM69.3 to RM72.3). The remedial reach includes Section 3 and the adjacent portions of Sections 2 and 4 (see Figure 5).
- (2) Additional sampling throughout the remedial reach will be performed during RD to further delineate the removal boundaries around the known hot spots and to identify other locations for remediation within the remedial reach. Sampling will be conducted in accordance with an EPA-approved work plan.

- (3) Additional sampling will occur in Section 8 of Area 1 to document post-time critical removal action (TCRA) conditions.
- (4) Long term monitoring (LTM) and ICs/ECs will be implemented until final remediation goals (FRGs) are achieved. The LTM program will confirm the ongoing effects of natural processes and will document the continued decline in PCB concentrations in various media, resulting in reductions in risk and ecological exposures. The final components of the LTM program will be defined during RD.
- (5) The anticipated average removal depth in the identified hot spots ranges from 24 to 40 inches. The estimated total volume to be removed is approximately 19,500 cy. The need for and effectiveness of a thin-layer cap will be evaluated during RD.
- (6) Typical silt curtain controls and surface water monitoring will be employed for turbidity and PCB migration from removal areas. Where disturbances to the existing vegetation and natural habitats occur within upland, wetland, and riverbank areas due to the construction of support facilities and implementation of RA, properties will be restored in kind. Excavated channel edges will be stabilized, and formerly vegetated upland areas that are disturbed for river access will be restored with topsoil and revegetated with native seed mixes and woody plantings.
- (7) Removal of PCB-containing sediment will also serve to remove other constituents detected in Area 1 sediment, including organic constituents and metals. Removal, along with an assumed thin-layer cap addition for management of residuals, provides protection to ecological receptors from exposure to PCBs and other constituents.
- (8) Calculations show that the surface weighted average concentration (SWAC) for the remedial reach will be reduced from 1.76 mg/kg to 1.09 mg/kg following the remedial action construction work. The Selected Remedy relies on natural recovery processes to achieve the FRGs and remedial action objectives (RAOs) over time.
- (9) The Selected Remedy will reach FRGs for smallmouth bass within 32 years after ROD issuance. The time to complete construction would be approximately 1 to 2 years, at an estimated cost of \$13,100,000 to \$16,600,000 (depending on the number of hot spot areas to be remediated).
- (10) Site-specific fish consumption advisories established and publicized by the State will continue to reduce risks posed to anglers and their families from consumption of PCB-containing fish. These advisories are already in place for Area 1, and the advisory for each fish type will remain in effect until

fish tissue PCB concentrations achieve RAOs for the fish specified. The advisories will be reviewed and verified annually as a component of the ICs.

- (b) The Area 1 of OU5 floodplain soil Remedy consists of the following main components:
- (1) Excavation of 11,300 cy of floodplain soil in the former Plainwell Impoundment with PCB concentrations greater than a RAL of 20 mg/kg in contiguous areas of one-quarter acre or larger, and the placement of clean backfill/topsoil in excavated areas to restore floodplain grade elevations. The total excavation footprint is approximately 7 acres.
 - (2) The actual excavation areas/footprints will be determined during RD based on additional floodplain soil sampling. Soil sampling in Area 1 for PCBs in the floodplain outside the former Plainwell Impoundment TCRA study area will also be performed prior to or during RD.
 - (3) Excavation will be completed to a target standard depth of 12 inches to remove contaminated soil in the ecological exposure zone (e.g., the top 6 inches), plus a 6-inch buffer. A geotextile fabric will be placed over the completed excavation area. Backfill includes 6 inches of fill soil and a minimum 6-inch topsoil cover to support revegetation and restoration of ecological habitat.
 - (4) ECs will be implemented to ensure the floodplain material does not erode into the river. LTM is required to evaluate backfill erosion, vegetative cover, effectiveness of the remedy, and ECs over time. Periodic maintenance will be carried out as necessary to repair or maintain the integrity of these systems and sampling of biota may be conducted to evaluate the effectiveness of the remedy. ICs (land use restrictions) also will be implemented to protect/restrict future land use changes.
 - (5) Completion of the RA construction work results in 98 percent to 100 percent of home ranges for ecological receptors being below the floodplain soil FRG of 11 mg/kg. The time to complete construction is approximately 1 year, at an estimated cost of \$6,800,000.
 - (6) Additional sampling will be conducted to determine whether any of the natural floodplain areas within Area 1 exceed the residential FRG. Areas exceeding the FRG would be remediated as described above, be capped, and/or have an IC/EC placed on the area.

1.4 The terms used in this SOW that are defined in CERCLA, in regulations promulgated under CERCLA, or in the Consent Decree (CD), have the meanings assigned to them in CERCLA, in such regulations, or in the CD, except that the term "Paragraph" or "¶"

means a paragraph of the SOW, and the term "Section" means a section of the SOW, unless otherwise stated.

2. COMMUNITY INVOLVEMENT

2.1 Community Involvement Responsibilities

- (a) EPA has the lead responsibility for developing and implementing community involvement activities at the Site. Previously during the RI/FS phase, EPA developed a Community Involvement Plan (CIP) for the Site. Pursuant to 40 C.F.R. § 300.435(c), EPA shall review the existing CIP and determine whether it should be revised to describe further public involvement activities during the Work that are not already addressed or provided for in the existing CIP.
- (b) If requested by EPA, SDs shall participate in community involvement activities, including participation in (1) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification, and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site. SDs' support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to (1) any Community Advisory Groups, (2) any Technical Assistance Grant recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. EPA may describe in its CIP SDs' responsibilities for community involvement activities. All community involvement activities conducted by SDs at EPA's request are subject to EPA's oversight. Upon EPA's request, SDs shall establish a community information repository at or near the Site to house one copy of the administrative record.
- (c) **SDs' CI Coordinator.** If requested by EPA, SDs shall, within 15 days, designate and notify EPA of SDs' Community Involvement Coordinator (SDs' CI Coordinator). SDs may hire a contractor for this purpose. SDs' notice must include the name, title, and qualifications of the SDs' CI Coordinator. SDs' CI Coordinator is responsible for providing support regarding EPA's community involvement activities, including coordinating with EPA's CI Coordinator regarding responses to the public's inquiries about the Site.

3. REMEDIAL DESIGN

3.1 RD Work Plan. SDs shall submit a Remedial Design (RD) Work Plan (RDWP) for EPA approval. The RDWP must include:

- (a) Plans for implementing all RD activities identified in this SOW, in the RDWP, or required by EPA to be conducted to develop the RD;

- (b) A description of the overall management strategy for performing the RD, including a proposal for phasing of design and construction, if applicable;
- (c) A description of the proposed general approach to contracting, construction, operation, maintenance, and monitoring of the Remedial Action (RA) as necessary to implement the Work;
- (d) A description of the responsibility and authority of all organizations and key personnel involved with the development of the RD;
- (e) Descriptions of any areas requiring clarification and/or anticipated problems (e.g., data gaps);
- (f) Description of any proposed pre-design investigation;
- (g) Descriptions of any applicable permitting requirements and other regulatory requirements;
- (h) Description of plans for obtaining access in connection with the Work, such as property acquisition, property leases, and/or easements; and
- (i) The following supporting deliverables described in ¶ 6.7 (Supporting Deliverables): Health and Safety Plan; Emergency Response Plan; Field Sampling Plan; and Quality Assurance Project Plan.

3.2 SDs shall meet regularly with EPA to discuss design issues as necessary, as directed or determined by EPA.

3.3 Pre-Design Investigation. The purpose of the Pre-Design Investigation (PDI) is to address data gaps by conducting additional field investigations.

- (a) **PDI Work Plan.** SDs shall submit a PDI Work Plan (PDIWP) for EPA approval. The PDIWP must include:

- (1) An evaluation and summary of existing data and description of data gaps;
- (2) A sampling plan including media to be sampled, contaminants or parameters for which sampling will be conducted, location (areal extent and depths), and number of samples;
- (3) Cross references to quality assurance/quality control (QA/QC) requirements set forth in the Quality Assurance Project Plan (QAPP) as described in ¶ 6.7(d); and
- (4) Additional sampling, if necessary, to determine whether any of the natural floodplain areas within Area 1 exceed the residential FRG.

- (b) Following the PDI, SDs shall submit a PDI Evaluation Report. This report must include:
 - (1) Summary of the investigations performed;
 - (2) Summary of investigation results;
 - (3) Summary of validated data (i.e., tables and graphics);
 - (4) Data validation reports and laboratory data reports;
 - (5) Narrative interpretation of data and results;
 - (6) Results of statistical and modeling analyses;
 - (7) Photographs documenting the work conducted;
 - (8) Conclusions and recommendations for RD, including design parameters and criteria; and
 - (9) A remediation evaluation of any natural floodplain areas with Area 1 that exceed the residential FRG.
- (c) EPA may require SDs to supplement the PDI Evaluation Report and/or to perform additional pre-design studies.

3.4 Preliminary (30%) RD. SDs shall submit a Preliminary (30%) RD for EPA's comment. The Preliminary RD must include:

- (a) A design criteria report, as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995);
- (b) Preliminary drawings and specifications;
- (c) Descriptions of permit requirements, if applicable;
- (d) Preliminary Operation and Maintenance (O&M) Plan and O&M Manual;
- (e) A description of how the RA will be implemented in a manner that minimizes environmental impacts in accordance with EPA's *Principles for Greener Cleanups* (Aug. 2009);
- (f) A description of monitoring and control measures to protect human health and the environment, such as air monitoring and dust suppression, during the RA;
- (g) Any proposed revisions to the RA Schedule that is set forth in ¶ 7.3 (RA Schedule); and

- (h) Updates of all supporting deliverables required to accompany the RDWP and the following additional supporting deliverables described in ¶ 6.7 (Supporting Deliverables): Site Wide Monitoring Plan; Construction Quality Assurance/Quality Control Plan; Transportation and Off-Site Disposal Plan; O&M Plan; O&M Manual; and Institutional Controls Implementation and Assurance Plan.

3.5 Pre-Final (95%) RD. SDs shall submit the Pre-final (95%) RD for EPA's comment. The Pre-final RD must be a continuation and expansion of the previous design submittal and must address EPA's comments regarding the Preliminary RD. The Pre-final RD will serve as the approved Final (100%) RD if EPA approves the Pre-final RD without comments. The Pre-final RD must include:

- (a) A complete set of construction drawings and specifications that are: (1) certified by a registered professional engineer; (2) suitable for procurement; and (3) follow the Construction Specifications Institute's MasterFormat 2012;
- (b) A survey and engineering drawings showing existing Site features, such as elements, property borders, easements, and Site conditions;
- (c) Pre-Final versions of the same elements and deliverables as are required for the Preliminary RD;
- (d) A specification for photographic documentation of the RA; and
- (e) Updates of all supporting deliverables required to accompany the Preliminary (30%) RD.

3.6 Final (100%) RD. SDs shall submit the Final (100%) RD for EPA approval. The Final RD must address EPA's comments on the Pre-final RD and must include final versions of all Pre-final RD deliverables.

4. REMEDIAL ACTION

4.1 RA Work Plan. SDs shall submit a RA Work Plan (RAWP) for EPA approval that includes:

- (a) A proposed RA Construction Schedule in both a critical path method and Gantt chart format;
- (b) An updated health and safety plan that covers activities during the RA; and
- (c) Plans for satisfying permitting requirements, including obtaining permits for off-site activity and for satisfying substantive requirements of permits for on-site activity.

4.2 Meetings and Inspections

- (a) **Preconstruction Conference.** SDs shall hold a preconstruction conference with EPA and others as directed or approved by EPA and as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995). SDs shall prepare minutes of the conference and shall distribute the minutes to all Parties.
- (b) **Periodic Meetings.** During the construction portion of the RA (RA Construction), SDs shall meet weekly with EPA, and others as directed or determined by EPA, to discuss construction issues. SDs shall distribute an agenda and list of attendees to all Parties prior to each meeting. SDs shall prepare minutes of the meetings and shall distribute the minutes to all Parties.
- (c) **Inspections**
 - (1) EPA or its representative shall conduct periodic inspections of or have an on-site presence during the Work. At EPA's request, the Supervising Contractor or other designee shall accompany EPA or its representative during inspections.
 - (2) SDs shall provide on-site office space for EPA personnel or its representative to perform their oversight duties. The minimum office requirements are e.g., a private office with at least 150 square feet of floor space, an office desk with chair, a four-drawer file cabinet, and a telephone with a private line, access to facsimile, reproduction, and personal computer equipment, wireless internet access, and sanitation facilities.
 - (3) Upon notification by EPA of any deficiencies in the RA Construction, SDs shall take all necessary steps to correct the deficiencies and/or bring the RA Construction into compliance with the approved Final RD, any approved design changes, and/or the approved RAWP. If applicable, SDs shall comply with any schedule provided by EPA in its notice of deficiency.

4.3 Emergency Response and Reporting

- (a) **Emergency Response and Reporting.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, SDs shall: (1) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (2) immediately notify the authorized EPA officer (as specified in ¶ 4.3(c)) orally; and (3) take such actions in consultation with the authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plan, the Emergency Response Plan, and any other deliverable approved by EPA under the SOW.

- (b) **Release Reporting.** Upon the occurrence of any event during performance of the Work that SDs are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, SDs shall immediately notify the authorized EPA officer orally.
- (c) The “authorized EPA officer” for purposes of immediate oral notifications and consultations under ¶ 4.3(a) and ¶ 4.3(b) is the EPA Project Coordinator, the EPA Alternate Project Coordinator (if the EPA Project Coordinator is unavailable), or the EPA Emergency Response Unit, Region 5 (if neither EPA Project Coordinator is available).
- (d) For any event covered by ¶ 4.3(a) and ¶ 4.3(b), SDs shall: (1) within [14] days after the onset of such event, submit a report to EPA describing the actions or events that occurred and the measures taken, and to be taken, in response thereto; and (2) within 30 days after the conclusion of such event, submit a report to EPA describing all actions taken in response to such event.
- (e) The reporting requirements under ¶ 4.3 are in addition to the reporting required by CERCLA § 103 or EPCRA § 304.

4.4 Off-Site Shipments

- (a) SDs may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. SDs will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if SDs obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).
- (b) SDs may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide notice to the appropriate state environmental official in the receiving facility’s state and to the EPA Project Coordinator. This notice requirement will not apply to any off-Site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. SDs also shall notify the state environmental official referenced above and the EPA Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. SDs shall provide the notice after the award of the contract for RA construction and before the Waste Material is shipped.

- (c) SDs may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, *EPA's Guide to Management of Investigation Derived Waste*, OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the ROD. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 CFR § 261.4(e) shipped off-site for treatability studies, are not subject to 40 C.F.R. § 300.440.

4.5 Certification of RA Completion

- (a) **RA Completion Inspection.** The RA is “Complete” for purposes of this ¶ 4.5 when it has been fully performed and the Performance Standards have been achieved. SDs shall schedule an inspection for the purpose of obtaining EPA’s Certification of RA Completion. The inspection must be attended by SDs and EPA and/or their representatives.
- (b) **RA Report.** Following the inspection, SDs shall submit a RA Report to EPA requesting EPA’s Certification of RA Completion. The report must: (1) include certifications by a registered professional engineer and by SD’s Project Coordinator that the RA is complete; (2) include as-built drawings signed and stamped by a registered professional engineer; (3) be prepared in accordance with Chapter 2 (Remedial Action Completion) of EPA’s *Close Out Procedures for NPL Sites* guidance (May 2011); (4) contain monitoring data to demonstrate that Performance Standards have been achieved; and (5) be certified in accordance with ¶ 6.5 (Certification).
- (c) If EPA concludes that the RA is not Complete, EPA shall so notify SDs. EPA’s notice must include a description of any deficiencies. EPA’s notice may include a schedule for addressing such deficiencies or may require SDs to submit a schedule for EPA approval. SDs shall perform all activities described in the notice in accordance with the schedule.
- (d) If EPA concludes, based on the initial or any subsequent RA Report requesting Certification of RA Completion, that the RA is Complete, the appropriate EPA official with delegated authority shall so certify to SDs. This certification will constitute the Certification of RA Completion for purposes of the CD, including Section [XVI] of the CD (Covenants by Plaintiff[s]). Certification of RA Completion will not affect SDs’ remaining obligations under the CD.

4.6 Periodic Review Support Plan (PRSP). SDs shall submit the PRSP for EPA approval. The PRSP addresses the studies and investigations that SDs shall conduct to support EPA’s reviews of whether the RA is protective of human health and the environment in accordance with Section 121(c) of CERCLA, 42 U.S.C. § 9621(c) (also known as “Five-year Reviews”). SDs shall develop the plan in accordance with *Comprehensive Five-year*

Review Guidance, OSWER 9355.7-03B-P (June 2001), and any other relevant five-year review guidances.

4.7 Certification of Work Completion

- (a) **Work Completion Inspection.** SDs shall schedule an inspection for the purpose of obtaining EPA's Certification of Work Completion. The inspection must be attended by SDs and EPA and/or their representatives.
- (b) **Work Completion Report.** Following the inspection, SDs shall submit a report to EPA requesting EPA's Certification of Work Completion. The report must:
 - (1) include certifications by a registered professional engineer and by SDs' Project Coordinator that the Work, including all O&M activities, is complete; and
 - (2) be certified in accordance with ¶ 6.5 (Certification). If the RA Report submitted under ¶ 4.5(b) includes all elements required under this ¶ 4.7(b), then the RA Report suffices to satisfy all requirements under this ¶ 4.7(b).
- (c) If EPA concludes that the Work is not complete, EPA shall so notify SDs. EPA's notice must include a description of the activities that SDs must perform to complete the Work. EPA's notice must include specifications and a schedule for such activities or must require SDs to submit specifications and a schedule for EPA approval. SDs shall perform all activities described in the notice or in the EPA-approved specifications and schedule.
- (d) If EPA concludes, based on the initial or any subsequent report requesting Certification of Work Completion, that the Work is complete, EPA shall so certify in writing to SDs. Issuance of the Certification of Work Completion does not affect the following continuing obligations: (1) activities under the Periodic Review Support Plan; (2) obligations under Sections [VIII] (Property Requirements), [XX] (Retention of Records), and [XIX] (Access to Information) of the CD; (3) Institutional Controls obligations as provided in the ICIAP; (4) Long-Term Monitoring Plan; and (5) reimbursement of EPA's Future Response Costs under Section [X] (Payments for Response Costs) of the CD.

5. REPORTING

5.1 Progress Reports. Commencing with the month following lodging of the CD and until EPA approves the RA Completion, SDs shall submit progress reports to EPA on a monthly basis, or as otherwise requested by EPA. The reports must cover all activities that took place during the prior reporting period, including:

- (a) The actions that have been taken toward achieving compliance with the CD;
- (b) A summary of all results of sampling, tests, and all other data received or generated by SDs;

- (c) A description of all deliverables that SDs submitted to EPA;
- (d) A description of all activities relating to RA Construction that are scheduled for the next month;
- (e) An updated RA Construction Schedule, together with information regarding percentage of completion, delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays;
- (f) A description of any modifications to the work plans or other schedules that SDs have proposed or that have been approved by EPA; and
- (g) A description of all activities undertaken in support of the Community Involvement Plan (CIP) during the reporting period and those to be undertaken in the next month.

5.2 Notice of Progress Report Schedule Changes. If the schedule for any activity described in the Progress Reports, including activities required to be described under ¶ 5.1(d), changes, SDs shall notify EPA of such change at least 7 days before performance of the activity.

6. DELIVERABLES

6.1 Applicability. SDs shall submit deliverables for EPA approval or for EPA comment as specified in the SOW. If neither is specified, the deliverable does not require EPA's approval or comment. Paragraphs 6.2 (In Writing) through 6.4 (Technical Specifications) apply to all deliverables. Paragraph 6.5 (Certification) applies to any deliverable that is required to be certified. Paragraph 6.6 (Approval of Deliverables) applies to any deliverable that is required to be submitted for EPA approval.

6.2 In Writing. As provided in [¶ 105] of the CD, all deliverables under this SOW must be in writing unless otherwise specified.

6.3 General Requirements for Deliverables. All deliverables must be submitted by the deadlines in the RD Schedule or RA Schedule, as applicable. SDs shall submit all deliverables to EPA in electronic form as well as providing a paper copy. Technical specifications for sampling and monitoring data and spatial data are addressed in ¶ 6.4. All other deliverables shall be submitted to EPA in the electronic and paper form specified by the EPA Project Coordinator. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", SDs shall also provide EPA with two paper copies of such exhibits.

6.4 Technical Specifications

- (a) Sampling and monitoring data should be submitted in standard Region 5 Electronic Data Deliverable (EDD) format. Other delivery methods may be

allowed if electronic direct submission presents a significant burden or as technology changes.

- (b) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (1) in the ESRI File Geodatabase format or the Region 5 EDD format; and (2) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.
- (c) Each file must include an attribute name for each site unit or sub-unit submitted. Consult <http://www.epa.gov/geospatial/policies.html> for any further available guidance on attribute identification and naming.
- (d) Spatial data submitted by SDs does not, and is not intended to, define the boundaries of the Site.

6.5 Certification. All deliverables that require compliance with this ¶ 6.5 must be signed by the SDs' Project Coordinator, or other responsible official of SDs, and must contain the following statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

6.6 Approval of Deliverables

(a) Initial Submissions

- (1) After review of any deliverable that is required to be submitted for EPA approval under the CD or the SOW, EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified

conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.

- (2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

(b) **Resubmissions.** Upon receipt of a notice of disapproval under ¶ 6.6(a) (Initial Submissions), or if required by a notice of approval upon specified conditions under ¶ 6.6(a), SDs shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (1) approve, in whole or in part, the resubmission; (2) approve the resubmission upon specified conditions; (3) modify the resubmission; (4) disapprove, in whole or in part, the resubmission, requiring SDs to correct the deficiencies; or (5) any combination of the foregoing.

(c) **Implementation.** Upon approval, approval upon conditions, or modification by EPA under ¶ 6.6(a) (Initial Submissions) or ¶ 6.6(b) (Resubmissions), of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and enforceable under the CD; and (2) SDs shall take any action required by such deliverable, or portion thereof. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under ¶ 6.6(a) or ¶ 6.6(b) does not relieve SDs of any liability for stipulated penalties under Section [XV] (Stipulated Penalties) of the CD.

6.7 Supporting Deliverables. SDs shall submit each of the following supporting deliverables for EPA approval, except as specifically provided. SDs shall develop the deliverables in accordance with all applicable regulations, guidances, and policies (see Section 9 (References)). SDs shall update each of these supporting deliverables as necessary or appropriate during the course of the Work, and/or as requested by EPA.

- (a) **Health and Safety Plan.** The Health and Safety Plan (HASP) describes all activities to be performed to protect on site personnel and area residents from physical, chemical, and all other hazards posed by the Work. SDs shall develop the HASP in accordance with EPA's Emergency Responder Health and Safety and Occupational Safety and Health Administration (OSHA) requirements under 29 C.F.R. §§ 1910 and 1926. The HASP should cover RD activities and should be, as appropriate, updated to cover activities during the RA and updated to cover activities after RA completion. EPA does not approve the HASP, but will review it to ensure that all necessary elements are included and that the plan provides for the protection of human health and the environment.

- (b) **Emergency Response Plan.** The Emergency Response Plan (ERP) must describe procedures to be used in the event of an accident or emergency at the Site (for example, power outages, water impoundment failure, treatment plant failure, slope failure, etc.). The ERP must include:
- (1) Name of the person or entity responsible for responding in the event of an emergency incident;
 - (2) Plan and date(s) for meeting(s) with the local community, including local, State, and federal agencies involved in the cleanup, as well as local emergency squads and hospitals;
 - (3) Spill Prevention, Control, and Countermeasures (SPCC) Plan (if applicable), consistent with the regulations under 40 C.F.R. Part 112, describing measures to prevent, and contingency plans for, spills and discharges;
 - (4) Notification activities in accordance with ¶ 4.3(b) (Release Reporting) in the event of a release of hazardous substances requiring reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004; and
 - (5) A description of all necessary actions to ensure compliance with Paragraph [11] (Emergencies and Releases) of the CD in the event of an occurrence during the performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency or may present an immediate threat to public health or welfare or the environment.
- (c) **Field Sampling Plan.** The Field Sampling Plan (FSP) and addresses all sample collection activities. The FSP must be written so that a field sampling team unfamiliar with the project would be able to gather the samples and field information required. SDs shall develop the FSP in accordance with *Guidance for Conducting Remedial Investigations and Feasibility Studies*, EPA/540/G 89/004 (Oct. 1988).
- (d) **Quality Assurance Project Plan.** The Quality Assurance Project Plan (QAPP) augments the FSP and addresses sample analysis and data handling regarding the Work. The QAPP must include a detailed explanation of SDs' quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples. SDs shall develop the QAPP in accordance with *EPA Requirements for Quality Assurance Project Plans*, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006); *Guidance for Quality Assurance Project Plans*, QA/G-5, EPA/240/R 02/009 (Dec. 2002); and *Uniform*

Federal Policy for Quality Assurance Project Plans, Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005). The QAPP also must include procedures:

- (1) To ensure that EPA [and the State] and its [their] authorized representative have reasonable access to laboratories used by SDs in implementing the CD (SDs' Labs);
 - (2) To ensure that SDs' Labs analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring;
 - (3) To ensure that SDs' Labs perform all analyses using EPA-accepted methods (i.e., the methods documented in *USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis*, ILM05.4 (Dec. 2006); *USEPA Contract Laboratory Program Statement of Work for Organic Analysis*, SOM01.2 (amended Apr. 2007); and *USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration)*, ISM01.2 (Jan. 2010)) or other methods acceptable to EPA;
 - (4) To ensure that SDs' Labs participate in an EPA-accepted QA/QC program or other program QA/QC acceptable to EPA;
 - (5) For SDs to provide EPA and the State with notice at least 28 days prior to any sample collection activity;
 - (6) For SDs to provide split samples and/or duplicate samples to EPA and the State upon request;
 - (7) For EPA and the State to take any additional samples that they deem necessary;
 - (8) For EPA and the State to provide to SDs, upon request, split samples and/or duplicate samples in connection with EPA's and the State's oversight sampling; and
 - (9) For SDs to submit to EPA and the State all sampling and tests results and other data in connection with the implementation of the CD.
- (e) **Long Term Monitoring Plan.** The LTM program will obtain baseline information, confirm the ongoing effects of natural processes and will document the continued decline in PCB concentrations in various media, resulting in reductions in risk and ecological exposures. The LTM program will be implemented until FRGs are achieved. The LTM may be used to obtain information to determine whether to perform additional actions. The LTM plan will include at a minimum:

- (1) Fish monitoring annually for the first five years, then once every five years for the remainder of the LTM period. Fish samples would be collected within locations spanning Area 1 and the reference/background areas. Smallmouth bass and carp would be collected at each sampling location. Adult carp and both adult (fillet) and young-of-year (whole body) smallmouth bass would be collected and analyzed for total PCBs and lipid content;
- (2) Surface water quality monitoring would occur annually for the first five years then once every five years for the remainder of the LTM period to support EPA's five-year reviews. Samples would be collected representing each of the eight Sections of Area 1. Water samples would be analyzed for total PCBs;
- (3) Sediment samples will be collected to support EPA's five-year reviews by monitoring ongoing recovery conditions and natural attenuation in selected portions of Area 1;
- (4) Visual inspections of riverbank erosion would occur annually for the first five years then once every five years for the remainder of the LTM period. Additional inspections would be conducted after major storm/flooding events, as necessary;
- (5) Biological samples may be collected from terrestrial areas to evaluate the effectiveness of floodplain remedies;
- (6) Description of the data collection parameters, including existing and proposed monitoring devices and locations, schedule and frequency of monitoring, analytical parameters to be monitored, and analytical methods employed;
- (7) Description of how performance data will be analyzed, interpreted, and reported, and/or other Site-related requirements;
- (8) Description of verification sampling procedures;
- (9) Description of deliverables that will be generated in connection with monitoring, including sampling schedules, laboratory records, monitoring reports, and monthly and annual reports to EPA and State agencies; and
- (10) Description of proposed additional monitoring and data collection actions (such as increases in frequency of monitoring, and/or installation of additional monitoring devices in the affected areas) in the event that results from monitoring devices indicate changed conditions (such as higher than expected concentrations of the contaminants of concern).

- (f) **Construction Quality Assurance/Quality Control Plan (CQA/QCP).** The purpose of the Construction Quality Assurance Plan (CQAP) is to describe planned and systemic activities that provide confidence that the RA construction will satisfy all plans, specifications, and related requirements, including quality objectives. The purpose of the Construction Quality Control Plan (CQCP) is to describe the activities to verify that RA construction has satisfied all plans, specifications, and related requirements, including quality objectives. The CQA/QCP must:
- (1) Identify, and describe the responsibilities of, the organizations and personnel implementing the CQA/QCP;
 - (2) Describe the performance standards (PS) required to be met to achieve Completion of the RA;
 - (3) Describe the activities to be performed: (i) to provide confidence that PS will be met; and (ii) to determine whether PS have been met;
 - (4) Describe verification activities, such as inspections, sampling, testing, monitoring, and production controls, under the CQA/QCP;
 - (5) Describe industry standards and technical specifications used in implementing the CQA/QCP;
 - (6) Describe procedures for tracking construction deficiencies from identification through corrective action;
 - (7) Describe procedures for documenting all CQA/QCP activities; and
 - (8) Describe procedures for retention of documents and for final storage of documents.
- (g) **Transportation and Off-Site Disposal Plan.** The Transportation and Off-Site Disposal Plan (TODP) describes plans to ensure compliance with ¶ 4.4 (Off-Site Shipments). The TODP must include:
- (1) Proposed routes for off-site shipment of Waste Material;
 - (2) Identification of communities affected by shipment of Waste Material; and
 - (3) Description of plans to minimize impacts on affected communities.
- (h) **O&M Plan.** The O&M Plan describes the requirements for inspecting, operating, and maintaining the RA. SDs shall develop the O&M Plan in accordance with *Operation and Maintenance in the Superfund Program*, OSWER 9200.1 37FS,

EPA/540/F-01/004 (May 2001). The O&M Plan must include the following additional requirements:

- (1) Description of the PSs required to be met to implement the ROD;
 - (2) Description of activities to be performed: (i) to provide confidence that PS will be met; and (ii) to determine whether PS have been met;
 - (3) **O&M Reporting.** Description of records and reports that will be generated during O&M, such as daily operating logs, laboratory records, records of operating costs, reports regarding emergencies, personnel and maintenance records, monitoring reports, and monthly and annual reports to EPA and State agencies;
 - (4) Description of corrective action in case of systems failure, including:
(i) alternative procedures to prevent the release or threatened release of Waste Material which may endanger public health and the environment or may cause a failure to achieve PS; (ii) analysis of vulnerability and additional resource requirements should a failure occur; (iii) notification and reporting requirements should O&M systems fail or be in danger of imminent failure; and (iv) community notification requirements; and
 - (5) Description of corrective action to be implemented in the event that PS are not achieved; and a schedule for implementing these corrective actions.
- (i) **O&M Manual.** The O&M Manual serves as a guide to the purpose and function of the equipment and systems that make up the remedy. SDs shall develop the O&M Manual in accordance with *Operation and Maintenance in the Superfund Program*, OSWER 9200.1 37FS, EPA/540/F-01/004 (May 2001).
- (j) **Institutional Controls Implementation and Assurance Plan.** The Institutional Controls Implementation and Assurance Plan (ICIAP) describes plans to implement, maintain, and enforce the Institutional Controls (ICs) at the Site. SDs shall develop the ICIAP in accordance with *Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites*, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012), and *Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites*, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012). The ICIAP must include the following additional requirements:
- (1) Locations of recorded real property interests (e.g., easements, liens) and resource interests in the property that may affect ICs (e.g., surface, mineral, and water rights) including accurate mapping and geographic information system (GIS) coordinates of such interests; and

- (2) Legal descriptions and survey maps that are prepared according to current American Land Title Association (ALTA) Survey guidelines and certified by a licensed surveyor.

7. SCHEDULES

7.1 Applicability and Revisions. All deliverables and tasks required under this SOW must be submitted or completed by the deadlines or within the time durations listed in the RD and RA Schedules set forth below. SDs may submit proposed revised RD Schedules or RA Schedules for EPA approval. Upon EPA's approval, the revised RD and/or RA Schedules supersede the RD and RA Schedules set forth below, and any previously-approved RD and/or RA Schedules.

7.2 RD Schedule

	Description of Deliverable, Task	¶ Ref.	Deadline
1	RDWP	3.1	60 days after EPA's Authorization to Proceed regarding Supervising Contractor under CD ¶ [9.c]
2	PDIWP	3.3(a)	90 days after EPA's Authorization to Proceed regarding Supervising Contractor under CD ¶ [9.c]
3	Preliminary (30%) RD	3.4,	90 days after EPA approval of Final RDWP
4	Pre-final (90/95%) RD	3.5	60 days after EPA comments on Preliminary RD
5	Final (100%) RD	3.6	30 days after EPA comments on Pre-final RD

7.3 RA Schedule

	Description of Deliverable / Task	¶ Ref.	Deadline
1	Award RA contract		60 days after EPA Notice of Authorization to Proceed with RA
2	RAWP	4.1	120 days after EPA Notice of Authorization to Proceed with RA
4	Pre-Construction Conference	4.2(a)	15 days after Approval of RAWP
5	Start of Construction		30 days after Approval of RAWP
6	Completion of Construction		
7	Pre-final Inspection		30 days after completion of construction
8	Pre-final Inspection Report		30 days after completion of Pre-final Inspection
9	Final Inspection		30 days after Completion of Work identified in Pre-final Inspection Report
10	RA Report		60 days after Final Inspection
11	Work Completion Report	4.7(b)	
12	Periodic Review Support Plan	4.6	Four years after Start of RA Construction

8. STATE PARTICIPATION

- 8.1 Copies.** SDs shall, at any time they send a deliverable to EPA, send a copy of such deliverable to the State. EPA shall, at any time it sends a notice, authorization, approval, disapproval, or certification to SDs, send a copy of such document to the State.
- 8.2 Review and Comment.** The State will have a reasonable opportunity for review and comment prior to:
- (a) Any EPA approval or disapproval under ¶ 66.6 (Approval of Deliverables) of any deliverables that are required to be submitted for EPA approval; and
 - (b) Any approval or disapproval of the Construction Phase (RA Construction Completion), any disapproval of, or Certification of RA Completion under ¶ 4.5 (Certification of RA Completion), and any disapproval of, or Certification of Work Completion under ¶ 4.7 (Certification of Work Completion).

9. REFERENCES

- 9.1** The following regulations and guidance documents, among others, apply to the Work. Any item for which a specific URL is not provided below is available on one of the two EPA Web pages listed in ¶ 9.2:

- (a) A Compendium of Superfund Field Operations Methods, OSWER 9355.0-14, EPA/540/P-87/001a (Aug. 1987).
- (b) Contaminated Sediment Remediation Guidance for Hazardous Waste Sites, OSWER 93355.0-85, EPA/540/R-05/012 (Dec. 2005).
- (c) CERCLA Compliance with Other Laws Manual, Part I: Interim Final, OSWER 9234.1-01, EPA/540/G-89/006 (Aug. 1988).
- (d) Guidance for Conducting Remedial Investigations and Feasibility Studies, OSWER 9355.3-01, EPA/540/G-89/004 (Oct. 1988).
- (e) CERCLA Compliance with Other Laws Manual, Part II, OSWER 9234.1-02, EPA/540/G-89/009 (Aug. 1989).
- (f) Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties, OSWER 9355.5-01, EPA/540/G-90/001 (Apr. 1990).
- (g) Guidance on Expediting Remedial Design and Remedial Actions, OSWER 9355.5-02, EPA/540/G-90/006 (Aug. 1990).
- (h) Guide to Management of Investigation-Derived Wastes, OSWER 9345.3-03FS (Jan. 1992).
- (i) Permits and Permit Equivalency Processes for CERCLA On-Site Response Actions, OSWER 9355.7-03 (Feb. 1992).
- (j) National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule, 40 C.F.R. Part 300 (Oct. 1994).
- (k) Guidance for Scoping the Remedial Design, OSWER 9355.0-43, EPA/540/R-95/025 (Mar. 1995).
- (l) Remedial Design/Remedial Action Handbook, OSWER 9355.0-04B, EPA/540/R-95/059 (June 1995).
- (m) EPA Guidance for Data Quality Assessment, Practical Methods for Data Analysis, QA/G-9, EPA/600/R-96/084 (July 2000).
- (n) Operation and Maintenance in the Superfund Program, OSWER 9200.1-37FS, EPA/540/F-01/004 (May 2001).
- (o) Comprehensive Five-year Review Guidance, OSWER 9355.7-03B-P, 540-R-01-007 (June 2001).

- (p) Guidance for Quality Assurance Project Plans, QA/G-5, EPA/240/R-02/009 (Dec. 2002).
- (q) Institutional Controls: Third Party Beneficiary Rights in Proprietary Controls (Apr. 2004).
- (r) Quality management systems for environmental information and technology programs -- Requirements with guidance for use, ASQ/ANSI E4:2014 (American Society for Quality, February 2014).
- (s) Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005).
- (t) Superfund Community Involvement Handbook, EPA/540/K-05/003 (Apr. 2005).
- (u) EPA Guidance on Systematic Planning Using the Data Quality Objectives Process, QA/G-4, EPA/240/B-06/001 (Feb. 2006).
- (v) EPA Requirements for Quality Assurance Project Plans, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006).
- (w) EPA Requirements for Quality Management Plans, QA/R-2, EPA/240/B-01/002 (Mar. 2001, reissued May 2006).
- (x) USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis, ILM05.4 (Dec. 2006).
- (y) USEPA Contract Laboratory Program Statement of Work for Organic Analysis, SOM01.2 (amended Apr. 2007).
- (z) EPA National Geospatial Data Policy, CIO Policy Transmittal 05-002 (Aug. 2008), available at <http://www.epa.gov/geospatial/policies.html> and http://www.epa.gov/geospatial/docs/National_Geospatial_Data_Policy.pdf.
- (aa) Principles for Greener Cleanups (Aug. 2009), available at <http://www.epa.gov/oswer/greenercleanups/>.
- (bb) USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration), ISM01.2 (Jan. 2010).
- (cc) Close Out Procedures for National Priorities List Sites, OSWER 9320.2-22 (May 2011).
- (dd) Recommended Evaluation of Institutional Controls: Supplement to the "Comprehensive Five-Year Review Guidance," OSWER 9355.7-18 (Sep. 2011).

- (ee) Construction Specifications Institute's MasterFormat 2012, available from the Construction Specifications Institute, www.csinet.org/masterformat.
- (ff) Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012).
- (gg) Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012).
- (hh) EPA's Emergency Responder Health and Safety Manual, OSWER 9285.3-12 (July 2005 and updates), <http://www.epaossc.org/HealthSafetyManual/manual-index.htm>.
- (ii) Broader Application of Remedial Design and Remedial Action Pilot Project Lessons Learned, OSWER 9200.2-129 (Feb. 2013).

9.2 A more complete list may be found on the following EPA Web pages:

Laws, Policy, and Guidance <http://www.epa.gov/superfund/policy/index.htm>

Test Methods Collections <http://www.epa.gov/fem/methcollectns.htm>

9.3 For any regulation or guidance referenced in the CD or SOW, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after SDs receive notification from EPA of the modification, amendment, or replacement.

UNITED STATES OF AMERICA,

Plaintiff,

v.

GEORGIA-PACIFIC, LLC,
INTERNATIONAL PAPER CO.,
NCR CORPORATION, AND
WEYERHAEUSER COMPANY,

Defendants.

CIVIL ACTION NO.

**CONSENT DECREE
FOR THE IMPLEMENTATION OF CERTAIN RESPONSE ACTIONS
AT AREA 1 OF OPERABLE UNIT 5 OF THE
ALLIED PAPER, INC./PORTAGE CREEK/KALAMAZOO RIVER SUPERFUND SITE.**

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607.

B. The United States in its complaint seeks, *inter alia*: (1) reimbursement of a portion of the costs incurred by EPA and the Department of Justice ("DOJ") for response actions at Area 1 of Operable Unit 5 ("OU 5") of the Allied Paper Kalamazoo River Superfund Site, EPA ID# MID006007306 ("Site") in Kalamazoo County, Michigan, together with accrued interest; and (2) performance of response actions by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Michigan (the "State") on _____, 20__, of negotiations with potentially responsible parties ("PRPs") regarding the implementation of the remedial design and remedial action ("RD/RA") for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree ("CD").

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the United States Department of Commerce National Oceanic Atmospheric Administration and Department of Interior Fish and Wildlife on _____, 20__, of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this CD.

E. The defendants that have entered into this CD ("Settling Defendants" or "SDs") do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on August 30, 1990, 55 Fed. Reg. 35502.

G. Pursuant to 40 C.F.R. § 300.430 and a February 21, 2007 Administrative Order on Consent ("2007 SRI/FS AOC"), Georgia Pacific, LLC ("GP") is conducting a Supplemental Remedial Investigation and Feasibility Study for operable unit 5 ("OU5") the Site.

H. Pursuant to the 2007 SRI/FS AOC, OU5 of the Site was divided into seven areas.

I. For Area 1 of OU 5 of the Site, GP completed a Remedial Investigation ("RI") Report on August 21, 2012, and a Feasibility Study ("FS") Report on November 4, 2014.

J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the Area 1 of OU 5 FS and of the proposed plan for remedial action on May 4,

2015, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Director of EPA Region 5's Superfund Division based the selection of the response action.

K. The decision by EPA on the remedial action to be implemented at Area 1 of OU 5 is embodied in a final Record of Decision ("ROD"), executed on September 28, 2015, on which the State of Michigan had a reasonable opportunity to review and comment/on which the State has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

L. Based on the information presently available to EPA, EPA believes that the SDs will properly and promptly implement the remedial action for Area 1 of OU 5 set forth in the ROD and the Work will be properly and promptly conducted by SDs if conducted in accordance with this CD and its appendices.

M. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth in the ROD and the Work to be performed by SDs shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

N. The Parties recognize, and the Court by entering this CD finds, that this CD has been negotiated by the Parties in good faith and implementation of this CD will expedite the cleanup of Area 1 of OU 5 at the Site and will avoid prolonged and complicated litigation between the Parties, and that this CD is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over SDs. Solely for the purposes of this CD and the underlying complaint, SDs waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. SDs shall not challenge the terms of this CD or this Court's jurisdiction to enter and enforce this CD.

III. PARTIES BOUND

2. This CD is binding upon the United States and upon SDs and their successors, and assigns. Any change in ownership or corporate or other legal status of a SD including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such SD's responsibilities under this CD.

3. SDs shall provide a copy of this CD to each contractor hired to perform the Work and to each person representing any SD with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this CD. SDs or their contractors shall provide written notice of the CD to all subcontractors

hired to perform any portion of the Work. SDs shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this CD. With regard to the activities undertaken pursuant to this CD, each contractor and subcontractor shall be deemed to be in a contractual relationship with SDs within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided in this CD, terms used in this CD that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this CD or its appendices, the following definitions shall apply solely for purposes of this CD:

“Affected Property” shall mean all real property at the Site and any other real property where EPA determines, at any time, that access, land, water, or other resource use restrictions, and/or Institutional Controls are needed to implement the Remedial Action, including, but not limited to, the following properties [**insert property descriptions**].

“Area 1 of Operable Unit 5” Area 1 is the most upstream segment of the site and includes the 22-mile reach of the Kalamazoo River from Morrow Dam to the former Plainwell Dam as well as the 3-mile stretch of Portage Creek from Alcott Street to its confluence with the Kalamazoo River (see Attachment).

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Consent Decree” or “CD” shall mean this consent decree and all appendices attached hereto (listed in Section XXII). In the event of conflict between this CD and any appendix, this CD shall control.

“Day” or “day” shall mean a calendar day. In computing any period of time under this CD, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“DOJ” shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

“Effective Date” shall mean the date upon which the approval of this CD is recorded on the Court’s docket.

“EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“EPA Past Response Cost Payment” shall mean the payments to be made to The Allied Paper, Inc./Portage Creek/Kalamazoo River Site OU5 Response Costs Special Account within the EPA Hazardous Substance Superfund under Subparagraph 27.a of this Consent Decree to reimburse EPA for a portion of its response costs incurred prior to January 31, 2016.

“Future Response Costs” shall mean all Area 1 OU 5 costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this CD, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this CD, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to ¶ 11 (Emergencies and Releases), ¶ 12 (Community Involvement) (including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)), ¶ 24 (Access to Financial Assurance), Section VII (Remedy Review), Section VIII (Property Requirements) (including the cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions and/or to secure, implement, monitor, maintain, or enforce Institutional Controls including the amount of just compensation), and Section XIII (Dispute Resolution), and all litigation costs. Future Response Costs shall also include all Interim Response Costs, and Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding Area 1 of OU 5 at the Site.

“Institutional Controls” or “ICs” shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with Area 1 of OU 5 of the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the RA; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

“Interim Response Costs” shall mean all Area 1 OU 5 costs, including, but not limited to, direct and indirect costs, (a) paid by the United States in connection with Area 1 of OU 5 the Site between January 31, 2016 and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at http://www.epa.gov/ocfopage/finstatement/superfund/int_rate.htm.

“MDEQ” shall mean the Michigan Department of Environmental Quality and any successor departments or agencies of the State.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Non-Settling Owner” shall mean any person, other than a SD, that owns or controls any Affected Property, including the Michigan Department of Natural Resources. The clause “Non-Settling Owner’s Affected Property” means Affected Property owned or controlled by Non-Settling Owner.

“Operable Unit 5” or “OU5” shall mean the areal extent of contaminated instream sediments, banks and floodplains along 77 miles of the Kalamazoo River from Morrow Dam east

of Kalamazoo to the river mouth at Lake Michigan, plus a 3-mile stretch of Portage Creek in Kalamazoo as is depicted generally on the figure attached as Appendix D.

“Operation and Maintenance” or “O&M” shall mean all activities required to operate, maintain, and monitor the effectiveness of the RA as specified in the SOW or any EPA-approved O&M Plan.

“Paragraph” or “¶” shall mean a portion of this CD identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean the United States and SDs.

“Performance Standards” or “PS” shall mean the cleanup levels and other measures of achievement of the remedial action objectives, as set forth in the ROD.

“Plaintiff” shall mean the United States.

“Proprietary Controls” shall mean easements or covenants running with the land that (a) limit land, water, or other resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded in the appropriate land records office.

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to Area 1 of OU5 of the Site signed on September 28, 2015, by the Regional Administrator, EPA Region’s delegate, and all attachments thereto. The ROD is attached as Appendix A.

“Remedial Action” or “RA” shall mean the remedial action selected in the ROD.

“Remedial Design” or “RD” shall mean those activities to be undertaken by SDs to develop final plans and specifications for the RA as stated in the SOW.

“Section” shall mean a portion of this CD identified by a Roman numeral.

“Settling Defendants” or “SDs” shall mean those Parties identified in Appendix D.

“Site” shall mean the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site, encompassing approximately 77 miles of the Kalamazoo River (from Morrow Lake Dam to Lake Michigan), including the river banks and formerly impounded adjacent floodplains and wetlands, as well as a 3-mile stretch of Portage Creek and four paper residual disposal areas, located in Kalamazoo and Allegan Counties, Michigan, and depicted generally on the map attached as Appendix C.

“State” shall mean the State of Michigan.

“Statement of Work” or “SOW” shall mean the document describing the activities SDs must perform to implement the RD, the RA, and O&M regarding the Site, which is attached as Appendix B.

“Supervising Contractor” shall mean the principal contractor retained by SDs to supervise and direct the implementation of the Work under this CD.

“The Allied Paper, Inc./Portage Creek/Kalamazoo River Site OU5 Response Costs Special Account” shall mean the special account, within the EPA Hazardous Substance Superfund, established for OU5 of the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA and DOJ, and the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce and the U.S. Fish and Wildlife Service.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any “hazardous substance” under Section 20101(1)(t) of Part 201 of the State of Michigan’s Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.20101(0) *et seq.*

“Work” shall mean implementation of the Selected Remedy in the ROD for Area 1 of OU5 and all activities and obligations SDs are required to perform under this CD except the activities required under Section XIX (Retention of Records).

V. GENERAL PROVISIONS

5. **Objectives of the Parties.** The objectives of the Parties in entering into this CD are to protect public health or welfare or the environment by the design and implementation of response actions at the Site by SDs, to pay response costs of Plaintiff, and to resolve the claims of Plaintiff against SDs as provided in this CD.

6. Commitments by SDs.

a. SDs shall finance and perform the Work in accordance with this CD and all deliverables developed by SDs and approved or modified by EPA pursuant to this CD. SDs shall pay the United States for its response costs as provided in this CD.

b. SDs’ obligations to finance and perform the Work, including obligations to pay amounts due under this CD, are joint and several. In the event of the insolvency of any SD or the failure by any SD to implement any requirement of this CD, the remaining SDs shall complete all such requirements.

7. **Compliance with Applicable Law.** Nothing in this CD limits SDs’ obligations to comply with the requirements of all applicable federal and state laws and regulations. SDs must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to

this CD, if approved by EPA, shall be deemed to be consistent with the NCP as provided in Section 300.700(c)(3)(ii) of the NCP.

8. Permits.

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, SDs shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. SDs may seek relief under the provisions of Section XII (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 8.a and required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

c. This CD is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

VI. PERFORMANCE OF THE WORK

9. Coordination and Supervision.

a. Project Coordinators.

(1) SDs' Project Coordinator must have sufficient technical expertise to coordinate the Work. SDs' Project Coordinator may not be an attorney representing any SD in this matter and may not act as the Supervising Contractor. SDs' Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work.

(2) EPA shall designate and notify the SDs of EPA's Project Coordinator and Alternate Project Coordinator. EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. EPA's Project Coordinator/Alternate Project Coordinator will have the same authority as a remedial project manager and/or an on-scene coordinator, as described in the NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when he or she determines that conditions at the Site constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.

(3) SDs' Project Coordinators shall meet with EPA's Project Coordinator at least monthly.

b. **Supervising Contractor.** SDs' proposed Supervising Contractor must have sufficient technical expertise to supervise the Work and a quality assurance system that

complies with ANSI/ASQC E4-2004, Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use (American National Standard).

c. Procedures for Disapproval/Notice to Proceed.

(1) SDs shall designate, and notify EPA, within 10 days after the Effective Date, of the name, contact information, and qualifications of the SDs' proposed Project Coordinator and Supervising Contractor.

(2) EPA, after a reasonable opportunity for review and comment by the State, shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Project Coordinator and Supervising Contractor, as applicable. If EPA issues a notice of disapproval, SDs shall, within 30 days, submit to EPA a list of supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. EPA shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. SDs may select any coordinator/contractor covered by an authorization to proceed and shall, within 21 days, notify EPA of SDs' selection.

(3) SDs may change their Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of ¶¶ 9.c(1) and 9.c(2).

10. Performance of Work in Accordance with SOW. SDs shall: (a) develop the RD; (b) perform the RA; and (c) operate, maintain, and monitor the effectiveness of the RA; all in accordance with the SOW and all EPA-approved, conditionally-approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval under the CD or SOW shall be subject to approval by EPA in accordance with ¶ [7.6] (Approval of Deliverables) of the SOW.

11. Emergencies and Releases. SDs shall comply with the emergency and release response and reporting requirements under ¶ [4.4] (Emergency Response and Reporting) of the SOW. Subject to Section XV (Covenants by Plaintiff), nothing in this CD, including ¶ [4.4] of the SOW, limits any authority of Plaintiff: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site. If, due to SDs' failure to take appropriate response action under ¶ [4.4] of the SOW, EPA take such action instead, SDs shall reimburse EPA under Section X (Payments for Response Costs) for all costs of the response action.

12. Community Involvement. If requested by EPA, SDs shall conduct community involvement activities under EPA's oversight as provided for in, and in accordance with, Section [2] (Community Involvement) of the SOW. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator and implementation of a technical assistance plan. Costs incurred by the United States under this Section constitute Future Response Costs to be reimbursed under Section X (Payments for Response Costs).

13. Modification of SOW or Related Deliverables.

a. If EPA determines that it is necessary to modify the work specified in the SOW and/or in deliverables developed under the SOW in order to achieve and/or maintain the Performance Standards or to carry out and maintain the effectiveness of the RA, and such modification is consistent with the Scope of the Remedy set forth in ¶ [1.3] of the SOW, then EPA may notify SDs of such modification. If SDs object to the modification they may, within 30 days after EPA's notification, seek dispute resolution under Section XIII.

b. The SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) if SDs invoke dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this CD, and SDs shall implement all work required by such modification. SDs shall incorporate the modification into the deliverable required under the SOW, as appropriate.

c. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this CD.

14. Nothing in this CD, the SOW, or any deliverable required under the SOW constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW or related deliverable will achieve the Performance Standards.

VII. REMEDY REVIEW

15. **Periodic Review.** SDs shall conduct, in accordance with ¶ [4.8] (Periodic Review Support Plan) of the SOW, studies and investigations to support EPA's reviews under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and applicable regulations, of whether the RA is protective of human health and the environment.

VIII. PROPERTY REQUIREMENTS

16. **Agreements Regarding Access and Non-Interference.** SDs shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by SDs and by Plaintiff, providing that such Non-Settling Owner: (i) provide Plaintiff and the other SDs, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the CD, including those listed in ¶ 20.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action, including the restrictions listed in ¶ 20.b (Land, Water, or Other Resource Use Restrictions).

a. **Access Requirements.** The following is a list of activities for which access is required regarding the Affected Property:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States or the State;
- (3) Conducting investigations regarding contamination at or near the Site;

- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved construction quality assurance quality control plan as provided in the SOW;
- (7) Implementing the Work pursuant to the conditions set forth in ¶ 60 (Work Takeover);
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by SDs or their agents, consistent with Section XVIII (Access to Information);
- (9) Assessing SDs' compliance with the CD;
- (10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the CD; and
- (11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and Institutional Controls.

b. **Land, Water, or Other Resource Use Restrictions.** The following is a list of land, water, or other resource use restrictions applicable to the Affected Property:

- (1) Prohibiting activities that could interfere with the RA;
- (2) Prohibiting use of contaminated groundwater;
- (3) Prohibiting activities that could result in exposure to contaminants in subsurface soils and groundwater;
- (4) Ensuring that any new structures on the Site will not be constructed in a manner that could interfere with the RA; and
- (5) Ensuring that any new structures on the Site will be constructed in a manner that will minimize potential risk of inhalation of contaminants.

17. **Proprietary Controls.** SDs shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure Non-Settling Owner's cooperation in executing and recording, in accordance with the procedures of this ¶ 17, Proprietary Controls that: (i) grant a right of access to conduct any activity regarding the CD, including those activities listed in ¶ 16.a (Access Requirements); and (ii) grant the right to enforce the land, water, or other resource use restrictions set forth in ¶ 16.b (Land, Water, or Other Resource Use Restrictions).

a. **Grantees.** The Proprietary Controls must be granted to one or more of the following persons and their representatives, as determined by EPA: the United States, the State, SDs, and other appropriate grantees. Proprietary Controls in the nature of a Uniform Environmental Covenants Act (UECA) document granted to persons other than the United States

must include a designation that EPA (and/or the State as appropriate) is a “third-party beneficiary” expressly granted the right of access and the right to enforce the covenants allowing EPA and/or the State to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property.

b. **Initial Title Evidence.** SDs shall, within 45 days after the Effective Date:

(1) **Record Title Evidence.** Submit to EPA a title insurance commitment or other title evidence acceptable to EPA that: (i) names the proposed insured or the party in whose favor the title evidence runs, or the party who will hold the real estate interest, or if that party is uncertain, names the United States, the State, the SD, or “To Be Determined;” (ii) covers the Affected Property that is to be encumbered; (iii) demonstrates that the person or entity that will execute and record the Proprietary Controls is the owner of such Affected Property; (iv) identifies all record matters that affect title to the Affected Property, including all prior liens, claims, rights (such as easements), mortgages, and other encumbrances (collectively, “Prior Encumbrances”); and (v) includes complete, legible copies of such Prior Encumbrances; and

(2) **Non-Record Title Evidence.** Submit to EPA a report of the results of an investigation, including a physical inspection of the Affected Property, which identifies non-record matters that could affect the title, such as unrecorded leases or encroachments.

c. **Release or Subordination of Prior Liens, Claims, and Encumbrances.**

(1) SDs shall secure the release, subordination, modification, or relocation of all Prior Encumbrances on the title to the Affected Property revealed by the title evidence or otherwise known to any SD, unless EPA waives this requirement as provided under ¶¶ 17.c(2)-(4).

(2) SDs may, by the deadline under ¶ 17.b (Initial Title Evidence), submit an initial request for waiver of the requirements of ¶ 17.c(1) regarding one or more Prior Encumbrances, on the grounds that such Prior Encumbrances cannot defeat or adversely affect the rights to be granted by the Proprietary Controls and cannot interfere with the remedy or result in unacceptable exposure to Waste Material.

(3) SDs may, within 90 days after the Effective Date, or if an initial waiver request has been filed, within 45 days after EPA’s determination on the initial waiver request, submit a final request for a waiver of the requirements of ¶ 17.c(1) regarding any particular Prior Encumbrance on the grounds that SDs could not obtain the release, subordination, modification, or relocation of such Prior Encumbrance despite best efforts.

(4) The initial and final waiver requests must include supporting evidence including descriptions of and copies of the Prior Encumbrances and maps showing areas affected by the Prior Encumbrances. The final waiver request also must include evidence of efforts made to secure release, subordination, modification, or relocation of the Prior Encumbrances.

(5) SDs shall complete their obligations under ¶ 17.c(1) regarding all Prior Encumbrances: within 180 days after the Effective Date; or if an initial waiver request has been filed, within 135 days after EPA's determination on the initial waiver request; or if a final waiver request has been filed, within 90 days after EPA's determination on the final waiver request.

d. Update to Title Evidence and Recording of Proprietary Controls.

(1) SDs shall submit to EPA for review and approval, by the deadline specified in ¶ 17.c(5), all draft Proprietary Controls and draft instruments addressing Prior Encumbrances. The Proprietary Controls must be in substantially the form attached hereto as Appendix E.

(2) Upon EPA's approval of the proposed Proprietary Controls and instruments addressing Prior Encumbrances, SDs shall, within 15 days, update the original title insurance commitment (or other evidence of title acceptable to EPA) under ¶ 17.b (Initial Title Evidence). If the updated title examination indicates that no liens, claims, rights, or encumbrances have been recorded since the effective date of the original commitment (or other title evidence), SDs shall secure the immediate recordation of the Proprietary Controls and instruments addressing Prior Encumbrances in the appropriate land records. Otherwise, SDs shall secure the release, subordination, modification, or relocation under ¶ 17.c(1), or the waiver under ¶¶ 17.c(2)-(4), regarding any newly-discovered liens, claims, rights, and encumbrances, prior to recording the Proprietary Controls and instruments addressing Prior Encumbrances.

(3) If SDs submitted a title insurance commitment under ¶ 17.b(1) (Record Title Evidence), then upon the recording of the Proprietary Controls and instruments addressing Prior Encumbrances, SDs shall obtain a title insurance policy that: (i) is consistent with the original title insurance commitment; (ii) is for \$100,000 or other amount approved by EPA; (iii) is issued to the United States, SDs, or other person approved by EPA; and (iv) is issued on a current American Land Title Association (ALTA) form or other form approved by EPA.

(4) SDs shall, within 30 days after recording the Proprietary Controls and instruments addressing Prior Encumbrances, or such other deadline approved by EPA, provide to the United States and to all grantees of the Proprietary Controls: (i) certified copies of the recorded Proprietary Controls and instruments addressing Prior Encumbrances showing the clerk's recording stamps; and (ii) the title insurance policy(ies) or other approved form of updated title evidence dated as of the date of recording of the Proprietary Controls and instruments.

e. SDs shall monitor, maintain, enforce, and annually report on all Proprietary Controls required under this CD.

18. Best Efforts. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of SDs would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the

Affected Property, as applicable. If SDs are unable to accomplish what is required through “best efforts” in a timely manner, they shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist SDs, or take independent action, in obtaining such access and/or use restrictions, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section X (Payments for Response Costs).

19. If EPA determines in a decision document prepared in accordance with the NCP that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, SDs shall cooperate with EPA’s and the State’s efforts to secure and ensure compliance with such Institutional Controls.

IX. FINANCIAL ASSURANCE

20. In order to ensure completion of the Work, SDs shall secure financial assurance, initially in the amount of \$23,000,000.00 (“Estimated Cost of the Work”), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from the “Financial Assurance” category on the Cleanup Enforcement Model Language and Sample Documents Database at <http://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. SDs may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

e. A demonstration by one or more SDs that each such SD meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee accompanied by a standby funding commitment, which obligates SDs to pay funds to or at the

direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or

f. A guarantee to fund or perform the Work executed in favor of EPA by one of the following: (1) a direct or indirect parent company of a SD; or (2) a company that has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with a SD; provided, however, that any company providing such a guarantee must demonstrate to EPA’s satisfaction that it meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee.

21. SDs have selected, and EPA has found satisfactory, as an initial financial assurance a [insert type] prepared in accordance with ¶ 20. Within 30 days after the Effective Date, or 30 days after EPA’s approval of the form and substance of SDs’ financial assurance, whichever is later, SDs shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the **“Regional financial assurance specialist”**, to the United States, and to EPA as specified in Section XX (Notices and Submissions).

22. If SDs provide financial assurance by means of a demonstration or guarantee under ¶ 20.e or 20.f, the affected SDs shall also comply and shall ensure that their guarantors comply with the other relevant criteria and requirements of 40 C.F.R. § 264.143(f) and this Section, including, but not limited to: (a) the initial submission to EPA of required documents from the affected entity’s chief financial officer and independent certified public accountant no later than 30 days after the Effective Date; (b) the annual resubmission of such documents within 90 days after the close of each such entity’s fiscal year; and (c) the notification of EPA no later than 30 days, in accordance with ¶ 23, after any such entity determines that it no longer satisfies the relevant financial test criteria and requirements set forth at 40 C.F.R. § 264.143(f)(1). SDs agree that EPA may also, based on a belief that an affected entity may no longer meet the financial test requirements of ¶ 20.e or 20.f, require reports of financial condition at any time from such entity in addition to those specified in this Paragraph. For purposes of this Section, references in 40 C.F.R. Part 264, Subpart H, to: (1) the terms “current closure cost estimate,” “current post-closure cost estimate,” and “current plugging and abandonment cost estimate” include the Estimated Cost of the Work; (2) the phrase “the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates” includes the sum of all environmental obligations (including obligations under CERCLA, RCRA, and any other federal, state, or tribal environmental obligation) guaranteed by such company or for which such company is otherwise financially obligated in addition to the Estimated Cost of the Work under this CD; (3) the terms “owner” and “operator” include each SD making a demonstration or obtaining a guarantee under ¶ 20.e or 20.f; and (4) the terms “facility” and “hazardous Superfund facility” include the Site.

23. SDs shall diligently monitor the adequacy of the financial assurance. If any SD becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such SD shall notify EPA of such information within 7 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the

requirements of this Section, EPA will notify the affected SD of such determination. SDs shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected SD, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. SDs shall follow the procedures of ¶ 25 (Modification of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. SDs' inability to secure and submit to EPA financial assurance in accordance with this Section shall in no way excuse performance of any other requirements of this CD, including, without limitation, the obligation of SDs to complete the Work in accordance with the terms of this CD.

24. Access to Financial Assurance.

a. If EPA issues a notice of implementation of a Work Takeover under ¶ 60.b, then, in accordance with any applicable financial assurance mechanism and/or related standby funding commitment, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with ¶ 24.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and the affected SD fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 24.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under ¶ 60.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism and/or related standby funding commitment, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is provided under ¶ 20.e or 20.f, then EPA may demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. SDs shall, within 10 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 24 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into a Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this ¶ 24 must be reimbursed as Future Response Costs under Section X (Payments for Response Costs).

25. Modification of Amount, Form, or Terms of Financial Assurance. SDs may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism.

Any such request must be submitted to EPA in accordance with ¶ 21, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify SDs of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. SDs may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIII (Dispute Resolution). Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by SDs pursuant to the dispute resolution provisions of this CD or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, SDs shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with ¶ 21.

26. **Release, Cancellation, or Discontinuation of Financial Assurance.** SDs may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Certification of Work Completion under ¶ [4.9] (Certification of Work Completion) of the SOW; (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIII (Dispute Resolution).

X. PAYMENTS FOR RESPONSE COSTS

27. Payment by SDs for United States EPA Past Response Cost Payment.

a. Within 30 days after the Effective Date, SDs shall pay to EPA \$37,500,000.00 in payment for EPA Past Response Cost Payment. Payment shall be made in accordance with ¶ 29.a (instructions for past response cost payments).

b. **Deposit of EPA Past Response Cost Payment.** The total amount to be paid by Setting Defendants pursuant to ¶ 27.a shall be deposited by EPA in The Allied Paper, Inc./Portage Creek/Kalamazoo River Site OU5 Response Costs Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

28. **Payments by SDs for Future Response Costs.** SDs shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a. **Periodic Bills.** On a periodic basis, EPA will send SDs a bill requiring payment that includes a itemized cost summary, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and DOJ. SDs shall make all payments within 30 days after SDs' receipt of each bill requiring payment, except as otherwise provided in ¶ 30, in accordance with ¶ 29.b (instructions for future response cost payments).

b. **Deposit of Future Response Costs Payments.** The total amount to be paid by SDs pursuant to ¶ 28.a (Periodic Bills) shall be deposited by EPA in the Allied Paper,

Inc./Portage Creek/Kalamazoo River OU5 Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the The Allied Paper, Inc./Portage Creek/Kalamazoo River Site OU5 Response Costs Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site.

c. **Unused Amount.** After the EPA official with delegated authority issues the Certification of RA Completion pursuant to ¶ [4.7] (Certification of RA Completion) of the SOW and a final accounting of the Allied Paper Inc./Portage Creek/Kalamazoo River Site Future Response Costs Special Account, EPA will apply unused amounts to any other unreimbursed response costs or response actions remaining at the Site.

29. **Payment Instructions for SDs.**

a. **EPA Past Response Costs Payments.**

(1) The Financial Litigation Unit (FLU) of the United States Attorney's Office for the Eastern District of Michigan shall provide SDs, in accordance with ¶ 82, with instructions regarding making payments to DOJ on behalf of EPA. The instructions must include a Consolidated Debt Collection System (CDCS) number to identify payments made under this CD.

(2) For all payments subject to this ¶ 29.a, SDs shall make such payment by Fedwire Electronic Funds Transfer (EFT) / at <https://www.pay.gov> to the U.S. DOJ account, in accordance with the instructions provided under ¶ 29.a(1), and including references to the CDCS Number, Site/Spill ID Number _____, and DJ Number 90-11-2-07912/___.

(3) For each payment made under this ¶ 29.a, SDs shall send notices, including references to the CDCS, Site/Spill ID, and DJ numbers, to the United States, EPA, and the EPA Cincinnati Finance Center, all in accordance with ¶ 82.

b. **Future Response Costs Payments and Stipulated Penalties.**

(1) For all payments subject to this ¶ 29.b, SDs shall make such payment by Fedwire EFT, referencing the Site/Spill ID and DJ numbers. The Fedwire EFT payment must be sent as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

(2) For all payments subject to this ¶ 29.b, SD shall make such payment by Automated Clearinghouse (ACH) payment as follows:

PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact - Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

(3) For all payments subject to this ¶ 29.b, SD shall make such payment at <https://www.pay.gov> to the U.S. EPA account in accordance with instructions to be provided to SDs by EPA following lodging of the CD.

(4) For all payments subject to this ¶ 29.b, SD shall make such payment by official bank check(s) made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment. SDs shall send the check(s) to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

(5) For all payments made under this ¶ 29.b, SDs must include references to the Site/Spill ID and DJ numbers. At the time of any payment required to be made in accordance with ¶ 29.b, SDs shall send notices that payment has been made to the United States, EPA, and the EPA Cincinnati Finance Center, all in accordance with ¶ 82. All notices must include references to the Site/Spill ID and DJ numbers.

30. Contesting Future Response Costs. SDs may submit a Notice of Dispute, initiating the procedures of Section XIII (Dispute Resolution), regarding any Future Response Costs billed under ¶ 28 (Payments by SDs for Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such Notice of Dispute shall be submitted in writing within 30 days after receipt of the bill and must be sent to the United States pursuant to Section XX (Notices and Submissions). Such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If SDs submit a Notice of Dispute, SDs shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to the United States, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC), and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. SDs shall send to the United States, as provided in Section XX (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow

account is established as well as a bank statement showing the initial balance of the escrow account. If the United States prevails in the dispute, SDs shall pay the sums due (with accrued interest) to the United States within 7 days after the resolution of the dispute. If SDs prevail concerning any aspect of the contested costs, SDs shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States within 7 days after the resolution of the dispute. SDs shall be disbursed any balance of the escrow account. All payments to the United States under this Paragraph shall be made in accordance with ¶¶ 29.b (instructions for future response cost payments). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding SDs' obligation to reimburse the United States for its Future Response Costs.

31. **Interest.** In the event that any payment for EPA Past Response Cost Payment or for Future Response Costs required under this Section is not made by the date required, SDs shall pay Interest on the unpaid balance. The Interest on EPA Past Response Cost Payment shall begin to accrue on the Effective Date. The Interest on all subsequent Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of SDs' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of SDs' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to ¶ 47 (Stipulated Penalty Amounts – Work).

XI. INDEMNIFICATION AND INSURANCE

32. SDs' Indemnification of the United States.

a. The United States does not assume any liability by entering into this CD or by virtue of any designation of SDs as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). SDs shall indemnify, save, and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of SDs, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on SDs' behalf or under their control, in carrying out activities pursuant to this CD, including, but not limited to, any claims arising from any designation of SDs as EPA's authorized representatives under Section 104(e) of CERCLA. Further, SDs agree to pay the United States all costs they incur including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of SDs, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this CD. The United States shall not be held out as a party to any contract entered into by or on behalf of SDs in carrying out activities pursuant to this CD. Neither SDs nor any such contractor shall be considered an agent of the United States.

b. The United States shall give SDs notice of any claim for which the United States plans to seek indemnification pursuant to this ¶ 32, and shall consult with SDs prior to settling such claim.

33. SDs covenant not to sue and agree not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of SDs and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, SDs shall indemnify, save and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of SDs and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

34. **Insurance.** No later than 15 days before commencing any on-site Work, SDs shall secure, and shall maintain until the first anniversary after issuance of EPA's Certification of RA Completion by the appropriate EPA official with delegated authority and pursuant to ¶ [4.7] (Certification of RA Completion) of the SOW commercial general liability insurance with limits of \$5 million, for any one occurrence, and automobile liability insurance with limits of \$5 million, combined single limit, naming the United States as an additional insured with respect to all liability arising out of the activities performed by or on behalf of SDs pursuant to this CD. In addition, for the duration of this CD, SDs shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of SDs in furtherance of this CD. Prior to commencement of the Work, SDs shall provide to EPA certificates of such insurance and a copy of each insurance policy. SDs shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If SDs demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, SDs need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

XII. FORCE MAJEURE

35. "Force majeure," for purposes of this CD, is defined as any event arising from causes beyond the control of SDs, of any entity controlled by SDs, or of SDs' contractors that delays or prevents the performance of any obligation under this CD despite SDs' best efforts to fulfill the obligation. The requirement that SDs exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or a failure to achieve the Performance Standards.

36. If any event occurs or has occurred that may delay the performance of any obligation under this CD for which SDs intend or may intend to assert a claim of force majeure, SDs shall notify EPA's Project Coordinator orally or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 5, within 3 days of when SDs first knew that the event might cause a delay. Within 7 days thereafter, SDs shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of

any measures to be taken to prevent or mitigate the delay or the effect of the delay; SDs' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of SDs, such event may cause or contribute to an endangerment to public health or welfare, or the environment. SDs shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. SDs shall be deemed to know of any circumstance of which SDs, any entity controlled by SDs, or SDs' contractors or subcontractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude SDs from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 35 and whether SDs have exercised their best efforts under ¶ 35, EPA may, in its unreviewable discretion, excuse in writing SDs' failure to submit timely or complete notices under this Paragraph.

37. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this CD that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify SDs in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify SDs in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

38. If SDs elect to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution) regarding EPA's decision, they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, SDs shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that SDs complied with the requirements of ¶¶ 35 and 36. If SDs carry this burden, the delay at issue shall be deemed not to be a violation by SDs of the affected obligation of this CD identified to EPA and the Court.

39. The failure by EPA to timely complete any obligation under the CD or under the SOW is not a violation of the CD, provided, however, that if such failure prevents SDs from meeting one or more deadlines in the SOW, SDs may seek relief under this Section.

XIII. DISPUTE RESOLUTION

40. Unless otherwise expressly provided for in this CD, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this CD. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of SDs that have not been disputed in accordance with this Section.

41. A dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. Any dispute regarding this CD shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal

negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute.

42. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 15 days after the conclusion of the informal negotiation period, SDs invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by SDs. The Statement of Position shall specify SDs' position as to whether formal dispute resolution should proceed under ¶ 43 (Record Review) or 44.

b. Within 15 days after receipt of SDs' Statement of Position, EPA will serve on SDs its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under ¶ 43 (Record Review) or 44. Within 10 days after receipt of EPA's Statement of Position, SDs may submit a Reply.

c. If there is disagreement between EPA and SDs as to whether dispute resolution should proceed under ¶ 43 (Record Review) or 44, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if SDs ultimately appeal to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in ¶¶ 43 and 44.

43. Record Review. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation, the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this CD, and the adequacy of the performance of response actions taken pursuant to this CD. Nothing in this CD shall be construed to allow any dispute by SDs regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Superfund Division, EPA Region 5, will issue a final administrative decision resolving the dispute based on the administrative record described in ¶ 43.a. This decision shall be binding upon SDs, subject only to the right to seek judicial review pursuant to ¶¶ 43.c and 43.d.

c. Any administrative decision made by EPA pursuant to ¶ 43.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by SDs with the Court and served on all Parties within 10 days after receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this CD. The United States may file a response to SDs' motion.

d. In proceedings on any dispute governed by this Paragraph, SDs shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to ¶ 43.a.

44. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. The Director of the Superfund Division, EPA Region 5, will issue a final decision resolving the dispute based on the statements of position and reply, if any, served under ¶ 42. The Superfund Division Director's decision shall be binding on SDs unless, within 10 days after receipt of the decision, SDs file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the CD. The United States may file a response to SDs' motion.

b. Notwithstanding ¶ M (CERCLA § 113(j) record review of ROD and Work) of Section I (Background), judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

45. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of SDs under this CD, except as provided in ¶ 30 (Contesting Future Response Costs), as agreed by EPA, or as determined by the Court. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute, as provided in ¶ 53. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this CD. In the event that SDs do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIV (Stipulated Penalties).

XIV. STIPULATED PENALTIES

46. SDs shall be liable for stipulated penalties in the amounts set forth in ¶¶ 47 and 48 to the United States for failure to comply with the requirements of this CD specified below, unless excused under Section XII (Force Majeure). "Compliance" by SDs shall include completion of all activities and obligations, including payments, required under this CD, or any deliverable approved under this CD, in accordance with all applicable requirements of law, this CD, the SOW, and any deliverables approved under this CD and within the specified time schedules established by and approved under this CD.

47. Stipulated Penalty Amounts - Work (Including Payments and Excluding Deliverables).

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in ¶ 47.b:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	\$ 750
15th through 30th day	\$1,000
31st day and beyond	\$1,500

b. Compliance Milestones.

(1) Failure to submit and, if required by EPA, modify any and all draft and final Remedial Design and Remedial Action Work Plans in accordance with the schedule and requirements set forth in this Consent Decree and the attached SOW;

(2) Failure to submit and, if required by EPA, modify any significant deliverables as identified in the EPA approved Remedial Design and Remedial Action Work Plans in accordance with the schedule and requirements set forth in this Consent Decree and the attached SOW;

(3) Failure to implement the approved Remedial Design and Remedial Action Work Plans in accordance with the schedule and requirements set forth in this Consent Decree and the attached SOW;

(4) Failure to submit and, if required by EPA, modify Preliminary Pre-Final and Final Remedial Design and any significant deliverables as identified in the approved Final Remedial Design(s) in accordance with the schedule and requirements set forth in this Consent Decree and the attached SOW;

(5) Failure to complete the Remedial Action(s) required under this Consent Decree and the attached SOW in accordance with the schedule and requirements set forth in those documents;

(6) Failure to submit and, if required by EPA, modify Remedial Action Reports in accordance with the schedule and requirements set forth in this Consent Decree and the attached SOW;

(7) Failure to submit and, if required by EPA, modify the O&M Plan in accordance with the schedule and requirements set forth in this Consent Decree and the attached SOW;

(8) Failure to perform further response actions and additional Work in accordance with the schedule and requirements set forth in this Consent Decree;

(9) Failure to obtain access and/or institutional controls in accordance with the schedule and requirements set forth in this Consent Decree.

(10) Failure to establish and maintain financial assurance in compliance with the timelines and other substantive and procedural requirements of Section IX (Financial Assurance).

48. Stipulated Penalty Amounts - Deliverables.

a. **Material Defects.** If an initially submitted or resubmitted deliverable contains a material defect, and the deliverable is disapproved or modified by EPA under ¶ 7.6(a) (Initial Submissions) or 7.6(b) (Resubmissions) of the SOW due to such material defect, then the material defect shall constitute a lack of compliance for purposes of ¶ 46. The provisions of Section XIII (Dispute Resolution) and Section XIV (Stipulated Penalties) shall govern the accrual and payment of any stipulated penalties regarding SDs' submissions under this CD.

b. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to the CD:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	\$ 100
15th through 30th day	\$ 250
31st day and beyond	\$ 500

49. In the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 60 (Work Takeover), SDs shall be liable for a stipulated penalty in the amount of \$250,000. Stipulated penalties under this Paragraph are in addition to the remedies available under ¶¶ 24 (Access to Financial Assurance) and 60 (Work Takeover).

50. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under ¶ 7.6 (Approval of Deliverables) of the SOW, during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies SDs of any deficiency; (b) with respect to a decision by the Director of the Superfund Division, EPA Region 5, under ¶ 43.b or 44.a of Section XIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that SDs' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XIII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this CD shall prevent the simultaneous accrual of separate penalties for separate violations of this CD.

51. Following EPA's determination that SDs have failed to comply with a requirement of this CD, EPA may give SDs written notification of the same and describe the noncompliance. EPA may send SDs a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified SDs of a violation.

52. All penalties accruing under this Section shall be due and payable to the United States within 30 days after SDs' receipt from EPA of a demand for payment of the penalties,

unless SDs invoke the Dispute Resolution procedures under Section XIII (Dispute Resolution) within the 30-day period. All payments to the United States under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with ¶ 29.b (instructions for future response cost payments).

53. Penalties shall continue to accrue as provided in ¶ 50 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement of the parties or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owed shall be paid to EPA within 15 days after the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, SDs shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days after receipt of the Court's decision or order, except as provided in ¶ 53.c;

c. If the District Court's decision is appealed by any Party, SDs shall pay all accrued penalties determined by the District Court to be owed to the United States into an interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the FDIC, within 60 days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days after receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to SDs to the extent that they prevail.

54. If SDs fail to pay stipulated penalties when due, SDs shall pay Interest on the unpaid stipulated penalties as follows: (a) if SDs have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to ¶ 53 until the date of payment; and (b) if SDs fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under ¶ 52 until the date of payment. If SDs fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

55. The payment of penalties and Interest, if any, shall not alter in any way SDs' obligation to complete the performance of the Work required under this CD.

56. Nothing in this CD shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of SDs' violation of this CD or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided in this CD, except in the case of a willful violation of this CD.

57. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CD.

XV. COVENANTS BY PLAINTIFF

58. **Covenants for SDs by United States.** Except as provided in ¶ 59 (General Reservations of Rights), the United States covenants not to sue or to take administrative action against SDs pursuant to Sections 106 and 107(a) of CERCLA for the Work, Past EPA Response Cost Payments, and recovery of EPA Future Costs. These covenants shall take effect upon receipt of EPA of the payments required by Section X (Payments) and any Interest or stipulated penalties due thereon under Paragraphs 47 and 48. These covenants are conditioned upon the satisfactory performance by SDs of their obligations under this CD. These covenants extend only to SDs and do not extend to any other person.

59. **General Reservations of Rights.** The United States reserves, and this CD is without prejudice to, all rights against SDs with respect to all matters not expressly included within Plaintiff's covenants. Notwithstanding any other provision of this CD, the United States reserves all rights against SDs with respect to:

- a. liability for failure by SDs to meet a requirement of this CD;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- c. liability arising from past, present, or future disposal, release, or threat of release of non-PCB Waste Material within the Site;
- d. liability based on the ownership of the Site by SDs when such ownership commences after signature of this CD by SDs;
- e. liability based on the operation of the Site by SDs when such operation commences after signature of this CD by SDs and does not arise solely from SDs' performance of the Work;
- f. liability based on SDs' transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this CD by SDs;
- g. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- h. criminal liability;
- i. liability for violations of federal or state law that occur during or after implementation of the Work;
- j. liability, prior to achievement of Performance Standards, for additional response actions that EPA determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, but that cannot be required pursuant to ¶ 13 (Modification of SOW or Related Deliverables);
- k. liability for additional Areas of OU 5, additional operable units at the Site, or the final response action;

l. liability for costs that the United States will incur regarding the Site but that are not within the definition of Future Response Costs; and

m. response costs incurred prior to January 31, 2016 above the amounts paid pursuant to ¶ 27.a (Payment by SDs for EPA Past Response Cost Payment).

60. Work Takeover.

a. In the event EPA determines that SDs: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to SDs. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide SDs a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 10-day notice period specified in ¶ 60.a, SDs have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify SDs in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this ¶ 60.b. Funding of Work Takeover costs is addressed under ¶ 24 (Access to Financial Assurance).

c. SDs may invoke the procedures set forth in ¶ 43 (Record Review), to dispute EPA's implementation of a Work Takeover under ¶ 60.b. However, notwithstanding SDs' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under ¶ 60.b until the earlier of (1) the date that SDs remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a final decision is rendered in accordance with ¶ 43 (Record Review) requiring EPA to terminate such Work Takeover.

61. Notwithstanding any other provision of this CD, the United States retains all authority and reserve all rights to take any and all response actions authorized by law.

XVI. COVENANTS BY SDs

62. **Covenants by SDs.** Subject to the reservations in ¶ 64, SDs covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Work, past response actions regarding the Site, EPA Past Response Cost Payment, Future Response Costs, and this CD, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through CERCLA §§ 106(b)(2), 107, 111, 112 or 113, or any other provision of law;

b. any claims under CERCLA §§ 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Work, past response actions regarding the Site, EPA Past Response Cost Payment, Future Response Costs, and this CD; or

c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of Michigan, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

63. Except as provided in ¶¶ 66 (Waiver of Claims by SDs) and 73 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States brings a cause of action or issues an order pursuant to any of the reservations in Section XV (Covenants by Plaintiff), other than in ¶¶ 59.a (claims for failure to meet a requirement of the CD), 59.h (criminal liability), and 59.i (violations of federal/state law during or after implementation of the Work), but only to the extent that SDs' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

64. SDs reserve, and this CD is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of SDs' deliverables or activities.

65. Nothing in this CD shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

66. Waiver of Claims by SDs.

a. SDs agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have:

(1) **De Micromis Waiver.** For all matters relating to the Site against any person where the person's liability to SDs with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials;

b. Exceptions to Waiver.

(1) The waiver under this ¶ 66 shall not apply with respect to any defense, claim, or cause of action that a SD may have against any person otherwise

covered by such waiver if such person asserts a claim or cause of action relating to the Site against such SD.

(2) The waiver under ¶ 66.a(1) (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

67. SDs agree not to seek judicial review of the final rule listing the Site on the NPL based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.

XVII. EFFECT OF SETTLEMENT; CONTRIBUTION

68. Except as provided in ¶ 66 (Waiver of Claims by SDs), nothing in this CD shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this CD. Except as provided in Section XVI (Covenants by SDs), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this CD diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

69. The Parties agree, and by entering this CD this Court finds, that this CD constitutes a judicially-approved settlement pursuant to which each SD has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this CD. The "matters addressed" in this CD are the Work, EPA Past Response Cost Payment, and Future Response Costs.

70. The Parties further agree, and by entering this CD this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this CD constitutes a judicially-approved settlement pursuant to which each Settling Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

71. Each SD shall, with respect to any suit or claim brought by it for matters related to this CD, notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

72. Each SD shall, with respect to any suit or claim brought against it for matters related to this CD, notify in writing the United States within 10 days after service of the complaint on such SD. In addition, each SD shall notify the United States within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial.

73. **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, SDs shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XV (Covenants by Plaintiff).

XVIII. ACCESS TO INFORMATION

74. SDs shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within SDs' possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this CD, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. SDs shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

75. Privileged and Protected Claims.

a. SDs may assert that all or part of a Record requested by Plaintiff is privileged or protected as provided under federal law, in lieu of providing the Record, provided SDs comply with ¶ 75.b, and except as provided in ¶ 75.c.

b. If SDs assert a claim of privilege or protection, they shall provide Plaintiff with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, SDs shall provide the Record to Plaintiff in redacted form to mask the privileged or protected portion only. SDs shall retain all Records that they claim to be privileged or protected until Plaintiff has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the SDs' favor.

c. SDs may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring,

hydrogeologic, scientific, chemical, radiological or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that SDs are required to create or generate pursuant to this CD.

76. **Business Confidential Claims.** SDs may assert that all or part of a Record provided to Plaintiff under this Section or Section XIX (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. §§ 2.203(b) and 2.310. SDs shall segregate and clearly identify all Records or parts thereof submitted under this CD for which SDs assert business confidentiality claims. Records submitted to EPA determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified SDs that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to SDs.

77. If relevant to the proceeding, the Parties agree that validated sampling or monitoring data generated in accordance with the SOW and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this CD.

78. Notwithstanding any provision of this CD, Plaintiff retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIX. RETENTION OF RECORDS

79. Until 10 years after EPA's Certification of Work Completion under ¶ [4.9] (Certification of Work Completion) of the SOW, each SD shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that SDs who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each SD must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each SD (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

80. At the conclusion of this record retention period, SDs shall notify the United States at least 90 days prior to the destruction of any such Records, and, upon request by the United States, and except as provided in ¶ 75 (Privileged and Protected Claims), SDs shall deliver any such Records to EPA.

81. Each SD certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since

notification of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XX. NOTICES AND SUBMISSIONS

82. All approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, and requests specified in this CD must be in writing unless otherwise specified. Whenever, under this CD, notice is required to be given, or a report or other document is required to be sent, by one Party to another, it must be directed to the person(s) specified below at the address(es) specified below. Any Party may change the person and/or address applicable to it by providing notice of such change to all Parties. All notices under this Section are effective upon receipt, unless otherwise specified. Notices required to be sent to EPA, and not to the United States, should not be sent to the DOJ. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the CD regarding such Party.

As to the United States:

EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
eescdcopy.enrd@usdoj.gov
Re: DJ # _____

and:

Chief
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Defense Section
Washington, D.C. 20044-7611
Re: DJ # _____

As to EPA:

Director, Superfund Division
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd., Chicago, IL 60604
[email]

and:

James Saric
EPA Project Coordinator
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd., Chicago, IL 60604
Saric.James@epa.gov
312-886-0992

**As to the Regional Financial
Management Officer:**

[name]
[address]
[email]

**At to EPA Cincinnati Finance
Center:**

EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268
cinwd_acctsreceivable@epa.gov

As to SDs:

[name]
SDs' Project Coordinator
[address]
[email]
[phone]

XXI. RETENTION OF JURISDICTION

83. This Court retains jurisdiction over both the subject matter of this CD and SDs for the duration of the performance of the terms and provisions of this CD for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this CD, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIII (Dispute Resolution).

XXII. APPENDICES

84. The following appendices are attached to and incorporated into this CD:

"Appendix A" is the ROD.

"Appendix B" is the SOW.

"Appendix C" is the description and/or map of the Site.

"Appendix D" is the complete list of SDs.

["Appendix E" is the draft form of Proprietary Controls.]

["Appendix F" is the financial assurance.]

XXIII. MODIFICATION

85. Except as provided in ¶ 13 (Modification of SOW or Related Deliverables), material modifications to this CD, including the SOW, shall be in writing, signed by the United States and SDs, and shall be effective upon approval by the Court. Except as provided in ¶ 13, non-material modifications to this CD, including the SOW, shall be in writing and shall be effective when signed by duly authorized representatives of the United States and SDs. A modification to the SOW shall be considered material if it implements a ROD amendment that fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R.

§ 300.435(c)(2)(ii). Before providing its approval to any modification to the SOW, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

86. Nothing in this CD shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this CD.

XXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

87. This CD shall be lodged with the Court for at least 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the CD disclose facts or considerations that indicate that the CD is inappropriate, improper, or inadequate. SDs consent to the entry of this CD without further notice.

88. If for any reason the Court should decline to approve this CD in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXV. SIGNATORIES/SERVICE

89. Each undersigned representative of a SD to this CD and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this CD and to execute and legally bind such Party to this document.

90. Each SD agrees not to oppose entry of this CD by this Court or to challenge any provision of this CD unless the United States has notified SDs in writing that it no longer supports entry of the CD.

91. Each SD shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this CD. SDs agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. SDs need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this CD.

XXVI. FINAL JUDGMENT

92. This CD and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the settlement embodied in the CD. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this CD.

93. Upon entry of this CD by the Court, this CD shall constitute a final judgment between and among the United States and SDs. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS __ DAY OF _____, 20__.

United States District Judge

Signature Page for CD regarding the _____ Superfund Site

FOR THE UNITED STATES OF AMERICA:

Dated

JOHN C. CRUDEN
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
Washington, D.C. 20530

KRISTIN M. FURRIE
SUMONA N. MAJUMDAR
Trial Attorneys
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611

Signature Page for CD regarding the Area 1 of Operable Unit 5 of the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site

[Name]
Regional Administrator, Region 5
U.S. Environmental Protection Agency
77 W. Jackson Blvd.
Chicago, Illinois 60604

T. Leverett Nelson
Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Chicago, Illinois 60604

Nicole Wood-Chi
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Chicago, Illinois 60604

Signature Page for CD regarding the Area 1 of OU5 of the Allied Paper, Inc/Portage
Creek/Kalamazoo River Superfund Site

FOR _____:
[Print name of Settling Defendant]

Dated

Name (print):
Title:
Address:

Agent Authorized to Accept Service
on Behalf of Above-signed Party:

Name (print): _____

Title: _____

Company: _____

Address: _____

Phone: _____

email: _____

NOTE: A separate signature page must be signed by each settlor.

